U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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B6

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: NOV 08 2007

EAC-04-109-50105

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (Director), Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a jewelry manufacturer. It seeks to employ the beneficiary permanently in the United States as a model maker I (jewelry/model maker). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). The director determined that the submitted evidence did not resolve inconsistencies in the record and thus the petitioner had not established that the beneficiary had the requisite experience as stated on the labor certification application. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's October 6, 2005 denial, the only issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted on April 25, 2001.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal[1]. On appeal, counsel submits a brief, an affidavit of the beneficiary, a notarial certification from Korean Jewelry Manufacturer's Association (KJMA), a certificate of close of business for [redacted] Company, an affidavit dated November 3, 2005, from In [redacted] and letters from [redacted] Other relevant evidence in the record includes an English translation of the affidavit of experience from [redacted] and an English translation of the affidavit of experience from [redacted] submitted with the initial filing, an affidavit of experience in original Korean language dated June 11, 2001 from [redacted] with its English translation and translator's certificate, an affidavit of experience in original Korean language dated June 11, 2001 from [redacted] with its English translation and

[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

translator's certificate submitted in response to the director's request for evidence (RFE) dated November 5, 2004, and an affidavit of experience in original Korean language undated from [redacted] with its English translation and translator's certificate and an affidavit of experience in original Korean language undated from [redacted] with its English translation and translator's certificate submitted in response to the director's notice of intent to deny (NOID) dated May 6, 2005. The record does not contain any other evidence relevant to the beneficiary's qualifications.

On appeal, counsel asserts that the submitted statements resolve the inconsistencies in the record and should be overwhelmingly convincing of the beneficiary's actual experience.

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also*, *Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of model maker I. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Experience	
	Job Offered	2 years
	Related Occupation	Blank

The duties of the proffered position are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A does not reflect any special requirements.

The beneficiary set forth his credentials on Form ETA-750B and signed his name on April 20, 2001 under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, he represented that he has been unemployed since August 2000. Prior to that, he represented that he worked as a full-time (working 35-40 hours per week) model maker at Keumtosa and Boss in Seoul, Korea from February 1998 to August 2000 and from May 1995 to February 1998 respectively. He did not provide any additional information concerning his employment background on that form.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

> Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) of trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The issue in the instant case is whether the petitioner with all documents submitted established the beneficiary's requisite two years of experience as a jewelry model maker prior to the priority date under the requirements set forth at 8 C.F.R. § 204.5(g)(1). The instant I-140 petition was submitted on March 1, 2004 with English translations of the affidavits of experience from [redacted] and [redacted] as evidence pertinent to the beneficiary's qualifications as required by the above regulation. The English translations were not dated and were submitted with certificates of licensed translation but without the original Korean versions. Therefore, CIS cannot accept them as primary evidence to establish the beneficiary's requisite experience.

In response to the director's November 5, 2004 RFE, counsel submitted the original Korean versions of the experience letters from [redacted] and [redacted] with their English translations and translator's certificates. The translations are the same copies submitted with the initial filing but dated June 11, 2001 as the date of swearing to the public translator, while the original Korean versions were dated June 11, 2001 as the date written and January 10, 2005 as the date of swearing to the public translator. Counsel did not explain how the authors wrote the original letters in Korean Language on June 11, 2001 and swore and signed them on January 10, 2005, but swore and signed the translations on June 11, 2001. Counsel submitted two certificates of translator for the experience letter from [redacted] while the experience letter from [redacted] was submitted without a certificate of translator. The translation of the experience letter dated June 11, 2001 from [redacted] did not comply with the terms of 8 C.F.R. § 103.2(b)(3):

> ***Translations.*** Any document containing foreign language submitted to [CIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The experience letter from [redacted] itself contains inconsistent information about [redacted]'s address. The letter states that [redacted] is presently residing at [redacted] Korea, but in the next sentence it says that [redacted] is located at [redacted] Seoul, Korea. Both of the writers claim to be the Section Chief of the companies and each of experience letters not only has the same format but actually has the exact same wording, even using matching, different font from the font used in the rest of the letters in part of the description of the duties. The AAO concurs with the director that the inconsistencies in the experience letters dated June 11, 2001 from [redacted] and [redacted] call into question the authenticity of the letters, and therefore, cannot be considered as primary evidence to meet the requirements set forth at 8 C.F.R. §§ 204.5(g)(1) and 103.2(b)(3).

In response to the director's NOID dated May 6, 2005, counsel submitted the third affidavits of experience from [redacted] and [redacted] Both of the third affidavits of experience come with English translations and translator's certificates dated May 30, 2005. Each of the affidavits of experience is without the date written or the date sworn. Each of authors claimed to be the section chief of the company and also the owner of the company. Again each of affidavits of experience has the exact same format and some wording except for names and addresses of authors, the companies and the period the beneficiary worked. In addition, the signatures of [redacted] and [redacted] on their third affidavits appear different from the ones on their first and second affidavits of experience. That raises a doubt on the authenticity of the signatures and the affidavits. The third affidavits of experience from [redacted] and [redacted] did not resolve the inconsistencies in the record and counsel did not submit any evidence to establish the author of

each of the affidavits was the beneficiary's employer during the time periods as request by the director in her RFE dated November 5, 2004. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. See *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The regulation at 8 C.F.R. § 204.5(g)(2) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner declined to provide evidence to establish the author's status as the beneficiary's former employer. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

On appeal, counsel submits an affidavit of the beneficiary, a notarial certification dated October 25, 2005 from KJMA, a certificate of close of business for [redacted], an affidavit dated November 3, 2005, from [redacted] and letters from [redacted] Chung.

The affidavit from [redacted] is the only letter submitted on appeal from the beneficiary's alleged former employer. This fourth affidavit from [redacted] of Keumtosa is submitted with its English translation and translator's certificate dated November 3, 2005. The author signed the original Korean letter and its English translation and sworn on November 3, 2005. The affidavit states in pertinent part that:

> I, [redacted] being duly sworn, depose and say. That I am a resident of Korea am presently residing at [redacted] That my title at the company is Section Chief, however, I'm also the owner of Keumtosa located at [redacted] Seoul, Korea. That I hereby certify from my own knowledge, and emphasize that I've been physically at Keumtosa since its inception, that [the beneficiary] was employed by my corporation as a Jewelry Model Maker from February 1998 to August 2000 for 40 hours a week from Monday-Friday.

This affidavit provides the author's title in the company, address and the company's name and address. It verifies that the beneficiary was employed as a full time jewelry model maker from February 1998 to August 2000 fro more than two years. However, the affidavit does not include a specific description of the duties the beneficiary performed as required by the regulation. Without a specific description of the duties the AAO cannot determine whether the beneficiary's more than two years of experience with [redacted] qualifies him to perform the duties of the proffered position set forth in Item 13 of the Form ETA 750A. It is noted that the same employer submitted several affidavits of experience with description of the duties, however, as previously discussed, none of them can be accepted and considered as primary evidence of the beneficiary's qualifications. Therefore, the petitioner failed to demonstrate that the beneficiary possessed the requisite two years of experience in the job offered for the proffered position as required by the ETA 750 with [redacted] fourth affidavit of experience. In addition, since the documents previously submitted contain inconsistencies and raise doubt on the authenticity of the affidavits from this employer, the petitioner must submit independent objective evidence, such as the employer's corporate documents, the employer's payroll records or personnel records, the beneficiary's income statements showing his compensation from [redacted] or taxation records showing his income from his employment with [redacted] during the time period, to resolve the inconsistencies, to establish the beneficiary's employment with [redacted] and to demonstrate that [redacted] was [redacted] authorized representative for the time period. However, the record does not contain such evidence.

On appeal counsel submits independent objective evidence to support his assertions, namely, the certificate of close of business for Shin Young Company issued by Director of Jongno District Tax Office in Seoul, Korea on November 1, 2005. The certificate of close of business for Shin Young Company shows that the beneficiary started his own business under the name of Shin Young Company on January 25, 2000 to manufacture jewelry and related articles and ran the business until June 30, 2000 when it was closed. This certificate does not verify the beneficiary's statement that he ran the business from 1997 to 2000. Although self-employment experience may qualify the beneficiary for the proffered position if documented with regulatory-prescribed evidence, this certificate of closing business does not verify his jewelry model maker position, his full-time employment and two years of such experience. Therefore, the petitioner failed to demonstrate that the beneficiary possessed the requisite two years of experience as a full-time jewelry model maker prior to the priority date with the certificate of closing business of [redacted]

Counsel submits a notarial certification dated October 25, 2005 from [redacted] the chairman of KJMA. KJMA's certification lists the beneficiary's experience in the occupation of gold, silver-smith/master jeweler as follows: from May 1991 to February 1992 served in [redacted] from April 1993 to October 1994 served in [redacted] from May 1995 to February 1998 served in Boss Jewelry, from January 1997 to June 2000 served in [redacted] (part-time only on Saturdays and Sundays), from February 1998 to August 2000 served in [redacted] and from January 2000 to June 2000 served in [redacted]. This certification certifies that the beneficiary is qualified with handcrafting for Gold and Silver Smith and Jewelry Design. KJMA is a trade association of jewelry manufacturers in Korea. It may certify that the beneficiary is qualified as a gold or silver smith/master jeweler in the relevant industry, however, KJMA is not in the position of providing documents to establish the beneficiary's employment as a jewelry model maker with one of its member manufacturers because it has never been the actual employer of the beneficiary. Although the regulation at 8 C.F.R. § 204.5(g)(1) states that the director may consider other documentation relating to the alien's experience if a letter from a current or former employer is unavailable, the petitioner must prove that the regulatory-prescribed experience letter from the former employer is not available. The petitioner in the instant case did not demonstrate that such an experience letter from the former employer is unavailable. In addition, the statement in KJMA's certification that the beneficiary served in [redacted] from January 1997 to June 2000 (part-time only on Saturdays and Sundays), and also from January 2000 to June 2000 is not supported by the business close certificate issued by the government tax office because it indicates that [redacted] was established on January 25, 2000 and closed on June 30, 2000.

Letters from [redacted] are provided by owners of companies in the same jewelry industry or in the neighborhood of [redacted], or by friends. None of them was the former employer of the beneficiary. As previously noted, the petitioner did not submit any evidence or explanation that regulatory-prescribed evidence is unavailable, and therefore that other documentation relating to the alien's experience must be considered. In addition, although the regulation at 8 C.F.R. § 204.5(g)(1) states that the director may consider other documentation relating to the alien's experience if a letter from a current or former employer is unavailable, it still requires other documentation meet certain evidentiary standard. Letters from people who have interacted with the beneficiary while he worked for or operated another company cannot be used in lieu of a letter from the actual company for which the beneficiary worked without solid objective evidence. Furthermore, none of these letters verifies that the beneficiary worked for [redacted] as a full-time jewelry model maker for at least two years prior to the priority date, nor did any of these letters come with any documentary evidence to support their contents. Similarly, counsel did not submit any independent objective evidence to support the affidavit of the beneficiary dated October 26, 2005. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec.

158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 582. Without independent objective evidence, the self-affidavit of the beneficiary will be given little weight in these proceedings.

Therefore, the petitioner did not establish with regulatory-prescribed evidence the beneficiary's prior two years of experience as a jewelry model maker, and further failed to establish that the beneficiary is qualified for the proffered position. Counsel's assertions on appeal cannot overcome the ground of denial in the director's decision. The director's October 6, 2005 decision will be affirmed.

Beyond the director's decision and counsel's assertions on appeal, the AAO has identified an additional ground of ineligibility and will discuss whether or not the petitioner has established that it had the continuing ability to pay the proffered wage beginning on the priority date until the beneficiary obtains lawful permanent residence. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. DOL. *See* 8 CFR § 204.5(d). As noted previously, the priority date in this case is April 25, 2001. The proffered wage as stated on the Form ETA 750 is $20.80 per hour ($37,856 per year[2]). On the petition, the petitioner claimed to have been established in 1999, and to have a gross annual income of $1,497,349. The petitioner did not provide information about its net annual income or the number of employees[3].

In determining the petitioner's ability to pay the proffered wage during a given period, CIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by

[2] Based on working 35 hours per week as set forth on the Form ETA 750.

[3] The petitioner's 2001 tax return shows that the petitioner paid salaries and wages of $23,389 and labor costs of $0 in 2001.

documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered prima facie proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner did not submit the beneficiary's W-2, 1099 forms or any other compensation documents, nor did the beneficiary claim that he had worked for the petitioner during the relevant years. The petitioner failed to demonstrate that it paid the beneficiary the proffered wage from 2001, the year of the priority date, to the present.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, CIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*citing Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross receipts and wage expense is misplaced. Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now CIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. The court in *Chi-Feng Chang* further noted:

> Plaintiffs also contend the depreciation amounts on the 1985 and 1986 returns are non-cash deductions. Plaintiffs thus request that the court *sua sponte* add back to net cash the depreciation expense charged for the year. Plaintiffs cite no legal authority for this proposition. This argument has likewise been presented before and rejected. *See Elatos*, 632 F. Supp. at 1054. [CIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support.

(Emphasis in original.) *Chi-Feng Chang* at 537.

The record contains the petitioner's Form 1120S U.S. Income Tax Return for an S Corporation for 2001. The tax return for 2001 demonstrate the following financial information concerning the petitioner's ability to pay the proffered wage of $37,856 per year for the year of the priority date:

- In 2001, the Form 1120S stated a net income[4] of $17,500.

[4] Where an S corporation's income is exclusively from a trade or business, CIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's Form 1120S. The instructions on the Form 1120S U.S. Income Tax Return for an S Corporation state on page one, "Caution: Include only trade or business income and expenses on lines 1a through 21."
Where an S corporation has income from sources other than from a trade or business, net income is found on Schedule K. The Schedule K form related to the Form 1120S states that an S corporation's total income from its various sources are to be shown not on page one of the Form 1120S, but on line 23 or line 17e of the

Therefore, for the year 2001, the petitioner did not have sufficient net income to pay the proffered wage that year.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, CIS will review the petitioner's assets. The petitioner's total assets include depreciable assets that the petitioner uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. Further, the petitioner's total assets must be balanced by the petitioner's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the proffered wage. Rather, CIS will consider net current assets as an alternative method of demonstrating the ability to pay the proffered wage.

Net current assets are the difference between the petitioner's current assets and current liabilities.[5] A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

- The petitioner's net current assets during 2001 were $540,581.

Therefore, for the year 2001, the petitioner had sufficient net current assets to pay the beneficiary the proffered wage.

The record before the director in the instant case closed on June 3, 2005 with the receipt by the director of the petitioner's submission of the response to the NOID. As of that date the petitioner's federal tax return for 2004 should have been available. However, the petitioner did not submit its tax returns or other regulatory-prescribed evidence for 2002 through 2004. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The tax returns would have demonstrated the amount of taxable income the petitioner reported to the IRS and further reveal its ability to pay the proffered wage. The petitioner failed to establish its ability to pay the proffered wage in 2002 through 2004 because it failed to submit its tax returns or other regulatory-prescribed evidence for these years.

The petitioner had not established that it had continuing ability to pay the beneficiary the proffered wage for 2002 through 2004 while it established its ability to pay the instant beneficiary the proffered wage in 2001 with its net current assets.

Schedule K, Shareholders' Shares of Income, Credits, Deductions, etc. *See* Internal Revenue Service, Instructions for Form 1120S (2003), *available at* http://www.irs.gov/pub/irs-prior/i1120s--2003.pdf; Instructions for Form 1120S (2002), *available at* http://www.irs.gov/pub/irs-prior/i1120s--2002.pdf.

[5]According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore, that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Mater of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form ETA 750A job offer, the predecessor to the Form ETA 750 and ETA Form 9089). *See also* 8 C.F.R. § 204.5(g)(2). CIS records show that the petitioner filed ten other immigrant petitions[6]. Nine petitions have been approved and one petition is still pending with CIS for which the petitioner is obligated to demonstrate its continuing ability to pay all the proffered wages to each of the beneficiaries[7].

Therefore, from the date the Form ETA 750 was accepted for processing by the U. S. Department of Labor, the petitioner had not established that it had the continuing ability to pay all the proffered wages as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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[6] The record shows that the petitioner filed 11 immigrant petitions including the instant petition with CIS under names of MBA Jewelers, Inc. and MBA Jewelers with FEIN: [redacted]

[7] The nine approved petitions are as follows:
EAC-00-067-51947 filed on December 23, 1999 with the priority date of November 13, 1997, approved on September 28, 2000, and the beneficiary obtained the lawful permanent residence on June 21, 2002;
EAC-00-206-52737 filed on June 19, 2000 with the priority date of December 3, 1996, approved on September 8, 2000, and the beneficiary obtained the lawful permanent residence on February 6, 2003;
EAC-01-136-53202 filed on March 21, 2001 with the priority date of December 11, 2000, approved on August 10, 2001, and the beneficiary obtained the lawful permanent residence on May 11, 2005;
EAC-01-136-53212 filed on March 21, 2001 with the priority date of December 11, 2000, approved on August 10, 2001, and the beneficiary obtained the lawful permanent residence on June 21, 2003;
EAC-03-060-53285 filed on December 16, 2002 with the priority date of May 28, 1999, approved on March 23, 2004, and the beneficiary obtained the lawful permanent residence on June 20, 2005;
EAC-03-199-50384 filed on June 23, 2003 with the priority date of April 25, 2001, approved on May 7, 2004, and the beneficiary obtained the lawful permanent residence on April 12, 2005;
EAC-03-219-51656 filed on July 2, 2003 with the priority date of April 25, 2001, approved on April 15, 2004, and the beneficiary obtained the lawful permanent residence on February 23, 2005;
EAC-06-041-50679 filed on November 23, 2005 with the priority date of September 2, 2005, approved on March 27, 2006;
SRC-07-108-54197 filed on February 20, 2007 with the priority date of January 25, 2005, approved on August 11, 2007, and the beneficiary's adjustment of status application is still pending.
The one pending petition is as follows:
LIN-07-106-52675 filed on February 28, 2007 and pending with CIS now.

ORDER: The appeal is dismissed.