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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 15 2008

IN RE: Petitioner: [redacted]
Beneficiary:

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 director, Vermont Service Center, sent a Notice of Intent to Deny (NOID) the instant petition to the petitioner because on April 14, 2005, the petitioner's attorney of record, [redacted] was convicted of multiple counts of immigration fraud following a jury trial in the United States District Court for the District of Maryland, Northern Division.[1] The director stated that it was the intent of Citizenship and Immigration Services (CIS) to deny the instant petition. When the petitioner did not reply to the NOID within thirty days of its issuance, the director denied the petition on December 9, 2005. The matter is presently before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner claims to be a retail jewelry business. It seeks to employ the beneficiary permanently in the United States as a jeweler. In his NOID dated September 13, 2005, the director stated that the broad scope of [redacted]'s malfeasance called into question whether the claimed petitioner in the instant petition actually did apply for the Form ETA Labor Certification and did file the I-140 petition. The director stated in his NOID that in order to be properly filed, a Form I-140 for a skilled worker must be filed by an intending employer, but that a Form I-140 was not properly filed unless it was actually signed by the petitioner. The director then stated that the petition would be denied unless the petitioner submitted a statement to CIS that the petitioner did retain former counsel or his firm to obtain a *bona fide* labor certificate relating to a bona fide job offer, and to file a bona fide immigrant worker visa petition so that the beneficiary could immigrate based on the bona fide job offer.

The director further stated that the statement should come from a chief executive officer, president, owner, or other responsible officer or employee and should indicate under oath that the petitioner retained [redacted] or his firm to file immigration-related papers on the beneficiary's behalf, that the person whose signature appears on the Form I-140 or Form ETA 750 is an officer or employee of the petitioner, and that the signature is genuine. The director also noted that CIS records showed the petitioner had multiple I-140 petitions while the evidence in the record indicated that only one petition may be approvable. Therefore the director requested complete copies of the petitioner's tax returns for tax years 2001 to 2004 along with a photograph of the petitioner's place of business that clearly showed it was the petitioner's place of business. The director also stated that if the person who purportedly signed either the Form I-140 or the Form ETA 750 actually was an officer or employee of the petitioner, the petitioner shall submit five specimens of that person's signature, so that CIS could compare the signature with the signatures on the Forms I-140 and ETA 750. The director finally noted that CIS would move to invalidate the petitioner's labor certificate if it determined that the labor certification application was not based on a bona fide job offer, citing 20 C.F.R. § 656.30(d) in pertinent part. Although the petitioner did not respond to the director's NOID, it did submit a timely appeal to the AAO following the director's denial of the petition.

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[1] In a press release dated April 14, 2005, sent to the petitioner with the NOID, the United States Attorney's office described the charges against Mr. [redacted] as follows:

> Testimony showed that beginning in 1998 and continuing until 2003, [Mr.] [redacted] and [Mr. [redacted] falsified Labor Certification Applications, which would allow aliens to emigrate or remain in the United States and make it appear as if the aliens really existed and that they were to be sponsored and work for US employers, when in many of those employers knew nothing about the aliens. Testimony showed that some of the alien's names were fictitious, and [redacted] and [redacted] offered for sale approved immigration documents to the highest bidding aliens.

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 December 9, 2005 denial, the single issue in this case is whether the petitioner through its former counsel submitted a valid Form ETA 750 and I-140 petition based on a bona fide job offer.

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 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[2]. On appeal, new counsel submits a brief and additional documentation.

Counsel also submits an affidavit from [redacted], who states that he is the owner of [redacted] T/A Fine Jewelry, that the petitioner's new business address is the "same," and that the previous address was [redacted], Forestville, Maryland. Mr. [redacted] further states that on March 22, 2001, the petitioner filed a labor certification for [redacted] as a jeweler and the he personally authorized his manager to sign the Form ETA 750. Mr. [redacted] affirmed that the Form I-140 was based on a bona fide job offer and was personally signed by Mr [redacted] as owner of the petitioner, and that the petitioner continues to offer the proffered position to Mr. [redacted] who has been working in the offered job for about two years. An additional letter signed by [redacted], dated December 30, 2005 with letterhead of [redacted] c [redacted], Forestville, Maryland stated that [redacted] has been working for Syed Ali Inc., as a permanent full-time jeweler, that [redacted] is a dedicated and hardworking employee and that the petitioner intends to continue his employment. The record also contains a paper with five samples of Mr. [redacted] handwriting, and four photographs of jewelry cases, with one photograph of a sign that states "jewelers."

Other relevant evidence in the record includes the petitioner's IRS Form 1120S for tax year 2001, submitted with the initial petition. On this return, the petitioner is identified as [redacted], located at [redacted], Upper Marlboro, Maryland. The document indicates the petitioner has ordinary income of $31,457, as indicated on line 23 of the petitioner's Schedule K. In response to the director's request for further evidence dated February 19, 2004, former counsel submitted incomplete copies of the petitioner's Forms 1120S for tax years 2002 and 2003 that indicated the petitioner had $21,789 as indicated by line 23 of the petitioner's Schedule K, and ordinary income of $13,684 as indicated by line 21 of the petitioner's Form 1120S. Former

[2] 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).

counsel in a cover letter states that the officer's compensation would be used to pay the proffered wage to the beneficiary and that the officers would not be drawing their salaries from the petitioner in order to cover the beneficiary's salary. Finally, the record contains a letter of work verification signed by [redacted], Owner, Habib Jewelry House, [redacted], Lahore, Pakistan. In his letter, [redacted] stated that the beneficiary had worked for the business as a jeweler from March 1, 1996 to November 30, 1999.[3] The record does not contain any other relevant evidence with regard to the instant petition.

In his brief, current counsel states that the petitioner has never been implicated in the federal indictment against [redacted] and that at no time in its history has the petitioner been the subject of inquiries into the legitimacy of its hiring practices. Counsel states that the petitioner did retain [redacted] in order to obtain a bona fide labor certificate relating to a bona fide job offer.

Counsel cites *Abdullah, v. INS*, 921 F. Supp 1080(S.D. N.Y. 1996) for the proposition that legacy INS would be constitutionally forbidden to assume that persons of one nationality are more inclined than others to fraud. Counsel notes that [redacted] is a native of the Indian subcontinent and that most of his clients, including the petitioner, are natives of the Indian subcontinent. Counsel asserts that just because a number of [redacted]'s clients colluded with him in perpetrating fraud, it does not mean that all persons of Indian Pakistani ethnic origin who solicited [redacted]'s legal assistance were co-conspirators in [redacted]'s scheme. Counsel states that if a denial recommendation is made in the instant petition, where no indication of fraud has been substantiated against the beneficiary or the petitioner, it would mean that the determination would be premised partially, or wholly on a fraud profile of certain nations, using the national origin of certain individuals as a determinative factor in the denial of their I-140 petitions. Counsel also cites to *Mathews v. Eldridge*, 424 U.S. 319(1976) for the proposition that the petitioner's due process rights must be considered before applying a blanket denial to all the petitioners who hired [redacted]

Counsel states that it is clear that the CIS has identified a pattern of inherently fraudulent applications, filed by some of [redacted]'s past clients, possibly including devices such as repeated usage of identical documents and forms previously found to be fraudulent or repeated usage of answers to stock questions identical to those previously established to have also been fraudulent. Counsel states that the evidence connecting the petitioner's petition to [redacted] wrongful acts is nonexistent, and that CIS would be wrong in applying the inferences with regard to people who committed fraud to innocent bystanders such as the petitioner. Counsel concludes the application of a conclusive presumption of a fraudulent petition against the petitioner would violate his due process rights.

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established on July 6, 2000 and to currently employ one worker. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the Form ETA 750B, signed by the beneficiary on March 5, 2001, the beneficiary did not claim to have worked for the petitioner.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later filed based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence.

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[3] The petitioner also submitted a Form ETA 750, Part B, signed by the beneficiary on March 5, 2001, under penalty of perjury, that also indicated the beneficiary had worked for the Habib Jewelry House in Lahore, Pakistan from March 1996 to November 1999.

With regard to the denial of the instant petition based on the non-response of the petitioner to the director's NOID, the AAO notes that a fraud investigation was undertaken by CIS with regard to the instant petition. Five companies associated with or called [redacted] were found to be incorporated in either the state of Maryland or the District of Columbia. As of September 5, 2006, all five companies had either had their status forfeited, dissolved, or revoked. A CIS site visit was conducted at the two addresses listed in the record, namely [redacted] and [redacted] Forestville, Maryland. The [redacted] listed on the appeal Form I-290B is associated with a company named Wireless Nation that primarily sells cellular phones and service. The second address, [redacted] is located within a mall with the number 3393 given to all stationary and portable kiosks located in the center aisle of the mall. The mall management identified two portable kiosks rented by [redacted], one of which was named Picture Perfect, a business that transfers photographs to item such as mugs and T-shirts. The other kiosk, purportedly a jewelry store, sells belts, silver belt buckles, t-shirts, silver necklaces and a small assortment of watches. According to the mall management, rather than repairing jewelry, the kiosk at the most might replace watch batteries.

Thus, based on the CIS site visit, no jewelry store, jewelry outlet or jewelry repair facility is located at either kiosk. The AAO notes that the photographs submitted by the petitioner to the record as evidence of its business operations while showing cases of necklaces, are not sufficient to establish the petitioner's claimed business of a retail jewelry store, or jewelry repair store.

With regard to the letter of work verification contained in the record, based on an investigation by a U.S. Embassy consular Fraud officer in Lahore, Pakistan, the address on the petitioner's letter of employment verification is for a private residence, not a business. Furthermore, the owner of the residence advised the consular officer that he had resided at this address for thirty years and there had never been a jewelry store at the location. The consular officer also consulted with an estate advisor for the A-1 township area who told the officer that the address 335 A-1 is a residence, that there are 52 commercial shops in the A-1 township and that 335 A-1 does not exist. The advisor further added that there is no jewelry shop at all in the A-1 township sector.

Based on the findings of the consular investigation, both the letter of work verification submitted by the petitioner to the record and the allegations contained in the Form ETA 750, Part B as to the beneficiary's previous work experience as a jeweler in Lahore, Pakistan, contain fraudulent information with regard to a material issue in these proceedings, namely, the beneficiary's qualifications for the proffered position. Furthermore, the results of the CIS site visit and investigation suggest that the petitioner's business operations are either dissolved, forfeited or revoked, and that the petitioner's business operation does not consist of a retail jewelry operation. Both issues are material to the issue of whether a bona fide job offer exists in the instant petition.

The regulation at 20 C.F.R. § 656.30(d), in pertinent part, states the following:

> (d) Invalidation of labor certifications. After issuance, a labor certification may be revoked by ETA using the procedures described in Sec. 656.32. Additionally, after issuance, a labor certification is subject to invalidation by the DHS or by a Consul of the Department of State upon a determination, made in accordance with those agencies' procedures or by a court, of fraud or willful misrepresentation of a material fact involving the labor certification application.

The AAO concurs with the director that the petitioner's ETA Form 750 should be invalidated based on willful misrepresentation of material facts.

Beyond the decision of the director, the AAO finds that the petitioner has not established its ability to pay the proffered wage. 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. Department of Labor. *See* 8 CFR § 204.5(d). The petitioner must also 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 March 22, 2001. The proffered wage as stated on the Form ETA 750 is $16.43 per hour ($34,174.40 per year). The Form ETA 750 states that the position requires no education, and two years of work experience in the job offered.

Former counsel submitted the petitioner's 2001 Form 1120S with the instant petition, and in response to the director's request for further evidence as to the petitioner's ability to pay the proffered wage, former counsel submitted documents that purport to be the petitioner's Forms 1120S for tax years 2002 and 2003.[4] On appeal, current counsel also submits a bank statement for [redacted]c. dated December 30, 2005 from Chevy Chase Bank that indicates an ending balance of $2,114.59; a bill from Verizon Telephone Company for January 31, 2006 for total charges of $306.07, and an IRS Form 1120S for the petitioner for tax year 2004 that indicates net income of $20,444.

The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, CIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting

[4] The AAO notes that the signatures on these two documents, ostensibly for [redacted], do not conform to the five sample signatures submitted by the petitioner to the record on appeal.

the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

On appeal, current counsel submits the petitioner's bank statement for December 2005 with no further explanation. If counsel is submitting the document to further prove the petitioner's ability to pay the proffered wage, counsel's reliance on the petitioner's bank statement is misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. The one bank statement in the record does not provide evidence as to the petitioner's ability to pay the proffered wage as of the 2001 priority date and continuing.

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 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. On appeal, the petitioner states that the beneficiary has worked for the petitioner for two years but offers no further evidentiary documentation as to any claimed employment. In the instant case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage during any relevant timeframe including the period from the priority date in 2001 or subsequently.

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* at 537.

The tax returns demonstrate the following financial information concerning the petitioner's ability to pay the proffered wage of $34,174.40 per year from the priority date:

- In 2001, the Form 1120S stated net income[5] of $31,457.
- In 2002, the Form 1120S stated net income of $21,789.
- In 2003, the Form 1120S stated net income of $13,684.
- In 2004, the Form 1120S stated net income of $20,444.

Therefore, for the years 2001 to 2004, the petitioner did not have sufficient net income to pay the proffered wage. In his denial of the petition, the director referred to the submission of multiple petitions for other beneficiaries. A review of CIS record reflects that the petitioner submitted a second I-140 petition for another beneficiary, [redacted] on May 21, 2002 (EAC 02 196 51688).[6] If the beneficiary in the second petition, filed during the same period of time as the instant petition, was offered a salary similar to the proffered wage in the instant petition, the petitioner would have to establish its ability to pay both beneficiaries the proffered wage, based on its net income for tax year 2001 to 2004. Where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending or approved 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 Matter 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 MA 7-50B job offer, the predecessor to the Form ETA 750 and ETA Form 9089). *See also* 8 C.F.R. § 204.5(g)(2).

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, including real property that counsel asserts should be considered. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become

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[5] 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 IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 23 (1997-2003), line 17e (2004-2005), or line 18 (2006) of Schedule K. *See* Instructions for Form 1120S, 2006, at http://www.irs.gov/pub/irs-pdf/i1120s.pdf (accessed July 14, 2008) (indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). Because the petitioner had additional deductions shown on its Schedule K for tax years 2001 and 2002, the petitioner's net income is found on Schedule K of its tax returns. With regard to tax years 2003 and 2004, there were no additional deductions, credits or similar items taken from the petitioner's ordinary business income, so the figure on Line 21 of the Form 1120S is used to calculate the petitioner's net income in tax years 2003 and 2004.

[6] The instant petition was filed on June 13, 2002. This petition was initially approved and then revoked on May 24, 2006.

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.[7] 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 AAO notes that the petitioner's tax returns for tax years 2002 and 2003, submitted by former counsel, are incomplete and contain no Schedules L. Therefore the AAO cannot examine the petitioner's ability to pay the proffered wage based on its net current assets for all relevant years. With regard to tax years 2001 and 2004, the record indicates that the petitioner's net current assets in 2001 were $15,021, and in 2004 were $52,019. Therefore in tax year 2004, the petitioner had sufficient net current assets to pay the proffered wage of $34,174.40.[8] However, as stated previously, the petitioner filed an additional I-140 petition for an additional worker during the 2002 priority year. Thus, the petitioner has to establish its ability to pay both proffered wages for two beneficiaries. If the second petition provided a similar proffered wage, the petitioner would have been unable to establish its ability to pay both proffered wages in tax year 2004, based on its net current assets.

Therefore, from the date the Form ETA 750 was accepted for processing by the U. S. Department of Labor, the petitioner has not established that it had the continuing ability to pay the beneficiary (and any other beneficiary) the proffered wage as of the priority date through an examination of wages paid to the beneficiary, or its net income, or its net current assets. Thus, for this additional reason, the petition cannot be approved.

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.

ORDER: The appeal is dismissed. The petitioner's Form ETA 750 is invalidated.

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[7] 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.

[8] The AAO notes that based on the CIS site visit to the two addresses listed in the instant petition, the record is not clear that the petitioner's net current assets are for a retail jewelry operation, or for a cellular phone purchase and service business operation. The ETA Form 750 was filed for the proffered position of jeweler, and no other job offer. If the beneficiary was performing duties, other than that of a jeweler, this would provide an additional reason to invalidate the labor certificate.