U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 04 2009

EAC 01 121 50990

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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the employment based preference visa petition. Subsequently, the director issued a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The petitioner appealed that decision to the Administrative Appeals Office (AAO) which rejected and remanded the matter to ensure affected parties received the NOIR and NOR. The director re-issued the NOIR and NOR. The matter is now back before the AAO on appeal of the NOR.

The petitioner's business is jewelry. It seeks to employ the beneficiary permanently in the United States as a jewelry supervisor. The offered job is a permanent position as a Supervisor, Jewelry, in the petitioner's outlet operated as Prince George's County, Maryland 20707.

As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor (DOL). The petition was filed on March 5, 2001 and it was approved by the director on October 26, 2001. After the petition was approved, the director issued a NOIR to the petitioner on March 31, 2004. On October 1, 2004, the director revoked the approval of the petition as the director determined that the petitioner had not established that the beneficiary had the *bona fide* intent to commence employment with the petitioner immediately or in the foreseeable future as set forth in the labor certification.[1]

Prior counsel filed an appeal of the director's decision on October 14, 2004. On January 25, 2006, the AAO rejected the appeal but remanded the matter to the director to consider counsel's contentions as a motion to reopen and reconsider whether or not to rescind the director's revocation of the prior approval of the petition. After review, the director issued the intent to revoke the approval of the petition on February 23, 2006. The petitioner made no response to the intent to revoke the approval of the petition. On July 6, 2006, the director issued a NOR. On July 24, 2006, the petitioner appealed. The matter is now before the AAO on appeal. The decision of the director will be affirmed, and, the approval of the Immigrant Petition for Alien Worker (Form I-140) will remain revoked.

An issue in this case is whether the petitioner had established that the beneficiary had the *bona fide* intent to work as a jewelry supervisor for the petitioner immediately or in the foreseeable future in his qualifying endeavor or in a related field according to the job stated under the terms of the labor certification.

The record shows that the appeal is properly filed and 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.

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[1] *See* 8 C.F.R. § 204.5(c). Further, the director found that the labor certification is valid only for a particular job opportunity and for the area of intended employment stated on the labor certification. *See Matter of Sunoco*, 17 I & N, Dec. 283 (BIA 1979).

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, provides that "[t]he Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)). Finally, the realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Id.*

Section 203(b)(3)(A)(i) of 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 January 14, 1998.[2] The proffered wage as stated on the Form ETA 750 A is $26,618.00 per year.

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

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[2] It has been approximately 11 years since the Alien Employment Application has been accepted and the proffered wage established. According to the employer certification that is part of the application, ETA Form 750 Part A, Section 23 b., states "The wage offered equals or exceeds the prevailing wage and I [the employer] guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work."

Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[3]

Relevant evidence in the record submitted by the petitioner includes the following documents: letters from prior counsel dated March 1, 2001, October 2, 2001, February 3, 2003, June 15, 2004, October 13, 2004, January 22, 2004 with an attachment, March 15, 2006 and July 21, 2006; the petitioner's U.S. Internal Revenue Service Form 1120S tax returns for 1998, 1999, 2000 and 2001; a W-2 Wage and Tax Statement for 2003 issued by to the beneficiary in the amount of $18,750.00; approximately ten pay statements issued by to the beneficiary of , Houston, Texas, stating year-to-date wages paid in the amount of $18,750.00; two checks, one issued by , dated August 25, 2003, in the amount of $10,000.00, and by , dated August 7, 2003, in the amount of $13,000.00, both checks payable to the beneficiary; Articles of Incorporation of ., filed July 13, 1998; Articles of Amendment of . filed May 9, 2001; an incomplete copy of a U.S. Internal Revenue Service Form 1120S tax return for 2002 stating ownership in equal shares between the beneficiary and a U.S. Citizenship and Immigration Services (USCIS) Interoffice Memorandum (HQBCIS 70/6.2.8-P) dated August 4, 2003; eight pages from an un-named reference entitled "Part III: Accounting in Managing a Business;" a "Stock Sale Agreement ," dated February 3, 2003; a Promissory Note in the amount of $60,000.00 dated February 3, 2003 between the beneficiary as the lender and as the borrower/obligor; a letter dated April 11, 2002, made by , offering employment to the beneficiary; the director's NOIR dated March 31, 2004; the director's NOR dated October 1, 2004; the beneficiary's U.S. Internal Revenue Service Form 1040 tax returns for 1999, 2000 and 2001 stating adjusted gross incomes of $19,421.00, $67,400.00 and $92,642.00 respectively; the AAO's decision dated January 25, 2006, the director's NOIR dated February 23, 2006; the director's NOR dated July 6, 2006; the petitioner's appeal filed July 24, 2006; an explanatory letter dated August 19, 2006, from prior counsel accompanying the appeal; a USCIS Interoffice Memorandum (HQPRD 70/6.2.8-P) dated May 12, 2005; and an explanatory letter from counsel dated September 13, 2005.

To determine whether a beneficiary is eligible for an employment based immigrant visa, USCIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. In

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[3] 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).

[4] Located at . Since is not the petitioner and the job location in which the beneficiary worked in 2003 was in Texas, not Maryland as required by the labor certification, this evidence of the beneficiary's employment has slight probative value in this case. There is no detail found in the record describing the job the beneficiary held in Texas. Presumably this employment was in addition to the other contemporaneous business enterprises operated by the beneficiary in 2003.

evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS 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).

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

> (ii) *Other documentation*—
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> (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.
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> (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The Petitioner's Labor Certification

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

14.	Education	
	Grade School	Blank
	High School	x
	College	na
	College Degree Required	Blank

According to the labor certification, the applicant must also have four years of experience in the job offered, the duties of which are delineated at Item 13 of the Form ETA 750A and since this is a public record, need not be recited in this decision.[5]

[5] According to the labor certification the beneficiary received a high school certificate in Pakistan in May of 1992. The beneficiary arrived without inspection in the United States in 1992 according to the I-140 petition.

The Beneficiary's Intent to Work in the Job Offered, Jewelry Supervisor

According to case precedent of *Matter of Semerjian*, 11 I&N 751 (Reg. Com. 1966) under the above factual situation,

> It is sufficient if . . . [the beneficiary] can show a bona fide purpose or intent to work in the United States in his qualifying endeavor. In determining whether the alien intends to engage in his profession or in a field related thereto,[6] consideration may be given to factors such as whether he is presently so employed and, if not, the length of time he has not been so employed and the reason therefore [sic]. Consideration may also be given to the alien's own declaration regarding his intended employment.

Id. at 754.

In connection with the beneficiary's adjustment of status proceedings, on September 18, 2002, the beneficiary attended his adjustment interview. At the interview, the beneficiary presented a letter from the petitioner dated April 11, 2002, offering to employ the beneficiary according to the terms of the labor certification. According to the director, the beneficiary stated that at the time of the interview that he had been self-employed since 1998 as the sole owner and operator of one business, operating in three locations in the State of Maryland employing three full-time employees and two part-time employees.

The Nature of the Beneficiary's Self-employment through Business Interests

After the beneficiary made the above statement under oath to the USCIS immigration officer on September 18, 2002, the AAO determined through public record information that the beneficiary was an owner in three separate diamond/jewelry sales/repair businesses in the same general Maryland business locale as the petitioner. Prior counsel and the beneficiary had only mentioned the existence of one of these businesses, In response to a request for evidence (RFE) from the AAO, counsel also informs that there was a fourth jewelry business partially owned by the beneficiary in 2003.

The Director's Decision

On July 6, 2006, the director revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The director stated that the beneficiary was not employed under the conditions set forth on the labor certification supporting the instant petition, and the evidence submitted in the case did not demonstrate that the beneficiary had the intent to accept employment in the job stated on the labor certification.

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[6] Although the case related to the professional visa classification, it is clear from the holding in the case that the certification required by section 212(a)(5) of the Act, as amended, as issued by the Secretary of Labor relates both to professional and skilled worker preference categories.

The director stated:

> The beneficiary is the sole owner and operator of another business separate from the instant petitioning entity, Inc.] which has three locations in the State of Maryland and employs four people full-time and two part-time. The beneficiary founded his own company in 1998 and it appears he has been self-employed since that time at his own entity.

Since the director's decision the AAO had determined that the beneficiary had ownership interests at the time of the adjustment interview in three businesses in Maryland identified as:

- (FEIN); at The address given for this corporation is which was the beneficiary's residence.
- (FEIN ; and
- (FEIN ;

The above information was subsequently confirmed by counsel in his response to the AAO's RFE dated July 11, 2008.[8] It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The Petitioner's Appeal of July 24, 2006

Prior counsel submitted a supplemental brief and additional evidence in this matter as follows: a USCIS Interoffice Memorandum (HQPRD 70/6.2.8-P) dated May 12, 2005; "Stock Sale Agreement ;" a Promissory Note in the amount of $60,000.00 dated February 3, 2003 between the beneficiary as the lender and as the borrower/obligor; two checks, one issued by c., dated August 25, 2003, in the amount of $10,000.00, and one issued by ., dated August 7, 2003, in the amount of $13,000.00, both checks payable to the beneficiary; Articles of Incorporation of . filed July 13, 1998; and Articles of Incorporation of . as filed July 13, 1998.

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[7] Information concerning these entities is available in the public record of the Maryland Department of Assessments and Taxations that may be accessed at http://sdatcert3.resiusa.org and in the record of proceeding.

[8] Counsel also mentioned that the beneficiary had a partial interest in a business described as , unrelated to the petitioner, but relinquished it early on in these proceedings, and for the first time disclosed that the beneficiary had an ownership interest in a fourth jewelry business acquired in 2003.

Prior counsel asserted that the director's finding that it was implausible under the factual circumstances of the case that the beneficiary would accept the offered job of jewelry supervisor is erroneous.

Prior counsel further asserted that the petitioner had submitted evidence that the beneficiary has since divested himself of interest in . However, prior counsel had not provided information or referenced at all , and also owned and operated by the beneficiary during the pendency of these proceedings.

Income from and/or was reported on the beneficiary's personal tax returns for the years 1999, 2000, 2001, 2002 and 2003. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Substituted counsel relies upon former counsel's appellate arguments and submitted a supplemental brief and *inter alia*, additional evidence in this matter as follows: an "Advisory Letter" dated July 10, 2008, from prior counsel; the beneficiary's U.S. Internal Revenue Service Form 1040 tax return account transcript for 1998; the beneficiary's U.S. Internal Revenue Service Form 1040 tax returns for 1999, 2000, 2001, 2002, 2003, 2004, 2005 and 2006; , U.S. Internal Revenue Service Form 1120S tax return account transcript for 1998 and 2003; s U.S. Internal Revenue Service Form 1120S tax returns for 1999, 2000, 2001, 2002; a "Stock Sale Agreement .;" a Promissory Note in the amount of $60,000.00 dated February 3, 2003 between the beneficiary as the lender and as the borrower/obligor; and s U.S. Internal Revenue Service Form 1120S tax returns for 2000, 2001, 2002 and 2003.

Counsel asserts the following additional contentions:

- That evidence presented in the record of proceeding demonstrates that the beneficiary intended to accept employment in the job stated, that is jewelry supervisor, on the labor certification.
- That the beneficiary's adjusted gross incomes for 1998, 2000 and 2001 were the beneficiary's "incentive to accept Petitioner's offer of employment."

The Jurisdictions of DOL and USCIS

In determining the respective jurisdictions of DOL and USCIS, one may turn to the entire body of recent court proceedings interpreting the interplay of the agencies and strictly confining the final determination made by the Department of Labor. *See Stewart Infra-Red Commissary, Etc. v. Coomey,*

661 F.2d 1 (1st Cir. 1981); *Denver Tofu Company v. District Director, Etc.,* 525 F. Supp. 254 (D. Colo. 1981); and, *Joseph v. Landon,* 679 F.2d 113 (7th Cir. 1982).

These cases recognize the labor certification process and the authority of the DOL in this process stem from section 212(a)(5)(A) of the Act, 8 U.S.C. 1182(a) (5)(A). In labor certification proceedings, the Secretary of Labor's determination is limited to analysis of the relevant job market conditions and the effect which the grant of a visa would have on the employment situation. USCIS, through the statutorily imposed requirement found in section 204 of the Act, 8 U.S.C. 1154, must investigate the facts in each case and, after consultation with DOL, determine if the material facts in the petition including the certification are true and correct. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

Although the advisory opinions of other Government agencies are given considerable weight, USCIS has authority to make the final decision about a beneficiary's eligibility for occupational preference classification. DOL is responsible for decisions about the availability of United States workers and the effect of a prospective employee's employment on wages and working conditions. DOL's decisions concerning these factors, however, do not limit the USCIS's authority regarding eligibility for occupational preference classification.[9] Therefore, the issuance of a labor certification does not necessarily mean a visa petition will be approved.

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[9] Relying in part on *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983), the Ninth Circuit stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)(14) of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. ***The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job*** [emphasis added].

The director found that the beneficiary was not presently employed in the position of jewelry supervisor or in a related field by the terms required by the supporting labor certification, and was not working for the petitioner.

Therefore the petition is not supported by evidence of a valid labor certification as required by the regulation at 8 C.F.R § 204.5(l)(3), and, the regulation at 20 C.F.R § 656.30(C)(2). The former regulation states in pertinent part that a petition under the "Skilled Worker" classification (that is under Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i)), must be accompanied by a labor certification from DOL. The latter regulation states in pertinent part that a labor certification for a specific job offer, in this instance a jewelry supervisor, is valid only for the particular job opportunity and for the area of intended employment, which in this instance is

Counsel has submitted a brief in the matter and he has disclosed for the first time in these proceedings that the beneficiary had ownership interests in two additional businesses in Maryland and Michigan identified as:

- c.,[10] (FEIN); d/b/a
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According to counsel, the beneficiary acquired a 30% interest in . in 2003, which the beneficiary presently holds. The beneficiary acquired . in 2006.

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.,* 699 F.2d at 1006, reached a similar decision in *Black Const. Corp. v. INS,* 746 F.2d 503, 504 (1984).

> The Department of Labor ("DOL") must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). **The INS then makes its own** determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir.1983).
>
> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

[10] In 2005 . stated gross sales of $1,627,686.00.

The Beneficiary's Employment Experiences

Notwithstanding USCIS' burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984). The beneficiary's employment during the pendency of the petition proceedings is relevant. *Supra,. Matter of Semerjian*, 11 I&N at 754. Therefore the self-employment by the beneficiary, in lieu of employment for a third party not controlled by the beneficiary, is similarly relevant.

According to the record of proceeding, the beneficiary arrived in the United States without inspection at the age of 18 from Pakistan having just received a high school certificate. The beneficiary was not qualified at the age of 18 years as a jewelry supervisor but in fact received his training after he arrived in the United States from two American employers.

According to the labor certification after arriving in the United States, the beneficiary was first employed in the United States by [redacted] as a "Supervisor, Jewelry" from January 1992 to December 1994. From January 1995 to April 1996, the beneficiary was employed as a "Supervisor, Jewelry" at Treasures, Lubbock, Texas. From May 1996 to present (i.e. January 11, 1998), the beneficiary stated that he was "self-employed" in jewelry sales/inspection.

Evidence in the record indicates that the beneficiary has been in self employment since May of 1996.

There is no evidence in the record of proceeding that the beneficiary was employed, had training or job experience as a jewelry supervisor prior to his arrival in the United States. Tallying the total amounts of time the beneficiary has spent in the positions of "Supervisor, Jewelry" and in self-employment in the United States, the beneficiary has spent approximately four-years and three months in the former position and thereafter, over 12 years and four months in self employment.

According to counsel, the beneficiary's adjusted gross incomes for 1998, 2000 and 2001 were the beneficiary's "incentive to accept Petitioner's offer of employment." The totality of the beneficiary's tax returns in evidence demonstrates the opposite conclusion, that the income received by the beneficiary in self employment greatly exceeds the proffered wage.

The beneficiary's U.S. Internal Revenue Service Form 1040 tax transcript and tax returns for 1998, 1999, 2000, 2001, 2002, 2003, 2004 2005 and 2006 stating adjusted gross incomes of $24,464.00, $19,421.00, $67,400.00 and $92,642.00, $58,986.00, $81,709.00, $125,893.00, $135,331.00 and $126,019.00 respectively are why the beneficiary has no *bona fide* intent to accept the petitioner's offer of employment.

The director's finding in her decision dated February 23, 2006, that it would be extremely unlikely that the beneficiary would reduce his income to the proffered wage, that is $26,618.00, is supported by the totality of the beneficiary's tax return evidence submitted in the record.

We find that, according to the facts as presented by the petitioner, the petitioner has no intent to employ the beneficiary as a jewelry supervisor according to the regulation at 8 C.F.R. § 204.5(c).[11] We find that, according to the facts as presented, the beneficiary had no intent to work as a jewelry supervisor for the petitioner according to the job stated and the terms of the labor certification, according to the regulation at 8 C.F.R. § 204.5(c), and, the case precedent of *Matter of Semerjian*, 11 I&N 751 (Reg. Com. 1966).

In pertinent part, in the case *Matter of Semerjian,* the court stated that in resolving the question of intent to accept employment in the stated job of the labor certification consideration may be given to factors such as whether the alien is presently employed, (and in that case, his/her profession) and, if not, the length of time he/she has not been so employed and the reasons therefore.

The beneficiary has been self employed for the past twelve years. The petitioner has not offered any explanation why the beneficiary is not working as a jewelry supervisor or provided a recent job offer letter to the beneficiary.

We find that the director demonstrated good and sufficient cause in revoking the approval of the petition. The director found that the beneficiary is not employed in the position, jewelry supervisor, at the terms as required by the supporting labor certification.

We find that the director did explain the factual and legal basis why the petition's approval was revoked by providing factual information and that the director communicated to the petitioner his findings, as found in the director's NOIR and NOR issued in this matter.[12] We find that the petitioner had not established that the beneficiary had the *bona fide* intent to work as a jewelry supervisor for the petitioner according to the job stated under the terms of the labor certification.

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 decision of the director dated July 6, 2006, is affirmed, and, the approval of the Immigrant Petition for Alien Worker (Form I-140) will remain revoked.

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[11] 8 C.F.R. § 204.5(c). Filing petition. Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act.

[12] The director's NOIR dated March 31, 2004; the director's NOR dated October 1, 2004; the director's NOIR dated February 23, 2006; and the director's NOR dated July 6, 2006.