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



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: OCT 28 2009

LIN 07 023 53093

IN RE:

Petitioner:

[REDACTED]

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.

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).

Perry J. Rhew  
Chief, Administrative Appeals Office

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

The petitioner is a jewelry store. It seeks to employ the beneficiary permanently in the United States as a retail manager. As required by statute, the petition is accompanied by Form ETA 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. 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 January 31, 2008 denial, the single issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

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 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 either 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 ETA Form 9089, Application for Permanent Employment Certification, was accepted for processing by any office within the employment system of the DOL. See 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its ETA Form 9089, Application for Permanent Employment Certification, as certified by the DOL 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 9089 was accepted on June 5, 2006. The proffered wage as stated on the Form ETA 9089 is \$12 per hour (\$24,960 per year). The Form ETA 9089 states that the position requires two years of experience as a retail manager and must have a diamondologist certificate.

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.<sup>1</sup>

On appeal, counsel submits a brief, a copy of a 2006 Profit Loss statement for TE Ebay Sales,<sup>2</sup> copies of the petitioner's 2007 Balance Sheet and Profit & Loss Statement,<sup>3</sup> a copy of the petitioner's 2007 Form 1120, U.S. Corporation Income Tax Return, copies of invoices, copies of the beneficiary's March 14, 2008 and March 28, 2008 payroll records, and copies of advertisements for Prime Outlets in Orlando, Florida. Other relevant evidence in the record includes copies of the petitioner's 2005 and 2006 Forms 1120, copies of the 2006 Form W-2, Wage and Tax Statement, issued by the petitioner on behalf of the beneficiary, and copies of the beneficiary's September 21, 2007 and October 5, 2007 payroll records.

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<sup>1</sup> 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).

<sup>2</sup> The petitioner is organized as a corporation. Because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. *See Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage." Therefore, the AAO will not consider the profit and loss statement of TE Ebay Sales when determining the petitioner's ability to pay the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2).

<sup>3</sup> The regulation at 8 C.F.R. § 204.5(g)(2) makes clear that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. As there is no accountant's report accompanying these statements, the AAO cannot conclude that they are audited statements. Unaudited financial statements are the representations of management. The unsupported representations of management are not reliable evidence and are insufficient to demonstrate the ability to pay the proffered wage. Therefore, the AAO will not consider the petitioner's or TE Ebay Sales' unaudited financial statements when determining the petitioner's ability to pay the proffered wage of \$24,960.

The evidence in the record of proceeding shows that the petitioner is structured as a C corporation. On the petition, the petitioner claimed to have been established on May 7, 2003 and to currently employ one worker. According to the tax returns in the record, the petitioner's tax year is based on a calendar year. On the Form ETA 9089, signed by the beneficiary on October 4, 2006, the beneficiary claims to have been employed by the petitioner from September 12, 2005 to the present (October 4, 2006). The beneficiary also listed that he had been employed by Orient Exquisite Inc./Time Essentials Corporation (the petitioner) from September 11, 2002 to September 11, 2005.

On appeal, counsel asserts:

During 2006 and 2007, the well-know[n] Belz Factory Outlet World, a 640,000 square-foot shopping center located at Oak Ridge and International Drive, in the heart of Orlando's tourist district, was [sic] been under a multi-million dollar renovation. Therefore, the Time Essentials Corporation faced a difficult financial situation as this company was within that renovation and they could not properly operate. However, the attached Time Essentials Corporation financial documents show a better standing for this year including the acquisition of another location to expand [the] company's business. As was stated, the drop in the income was due to the remodeling of the Belz Factory Outlet World mall in Orlando, which prevented a higher gross income from being demonstrated.

However, the documents submitted with the filing (2006 Income Taxes) always showed a high asset level (\$133,292.00), sufficient under the law to pay the salary. Also, please take into account that beneficiary's salary was already listed as having been paid under the salary expense heading on the same income tax submitted.

Please find enclosed Time Essentials Corporation's 2007 Income Tax Returns. Note that on those attached Income Taxes, payroll expenses are included in the amounts paid by the petitioner to the beneficiary in that year also.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 9089 labor certification application establishes a priority date for any immigrant petition later based on the ETA 9089, 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. 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, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS 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. In the instant case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage from the priority date of June 5, 2006. It is noted that the 2006 Form W-2, issued by the petitioner on behalf of the beneficiary, shows that the beneficiary was paid a wage of \$5,045 in 2006. Therefore, the petitioner is obligated to show that it had sufficient funds to pay the difference between the proffered wage of \$24,960 and the actual wage paid to the beneficiary in 2006 of \$5,045. That difference is \$19,915. The petitioner did not submit the beneficiary's 2007 Form W-2. Therefore, the petitioner is obligated to show that it had sufficient funds to pay the entire proffered wage of \$24,960 in 2007.

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, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1<sup>st</sup> Cir. 2009). 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 sales and profits and wage expense is misplaced. Showing that the petitioner's gross sales and profits 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.

With respect to depreciation, the court in *River Street Donuts* noted:

The AAO recognized that a depreciation deduction is a systematic allocation of the cost of a tangible long-term asset and does not represent a specific cash expenditure during the year claimed. Furthermore, the AAO indicated that the allocation of the depreciation of a long-term asset could be spread out over the years or concentrated into a few depending on the petitioner's choice of accounting and depreciation methods. Nonetheless, the AAO explained that depreciation represents an actual cost of doing business, which could represent either the diminution in value of buildings and equipment or the accumulation of funds necessary to replace perishable equipment and buildings. Accordingly, the AAO stressed that even though amounts deducted for depreciation do not represent current use of cash, neither does it represent amounts available to pay

wages.

We find that the AAO has a rational explanation for its policy of not adding depreciation back to net income. Namely, that the amount spent on a long term tangible asset is a "real" expense.

*River Street Donuts* at 116. “[USCIS] 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.” *Chi-Feng Chang* at 537 (emphasis added).

For a C corporation, USCIS considers net income to be the figure shown on Line 28 of the Form 1120, U.S. Corporation Income Tax Return. The petitioner’s tax returns demonstrate its net income for 2006 and 2007,<sup>4</sup> as shown in the table below.

- In 2006, the Form 1120 stated net income of -\$43,951.
- In 2007, the Form 1120 stated net income of \$48,685.

Therefore, for the year 2006, the petitioner did not have sufficient net income to pay the difference of \$19,915 between the proffered wage of \$24,960 and the actual wage paid to the beneficiary of \$5,045 in 2006. In 2007, the petitioner did have sufficient net income to pay the proffered wage of \$24,960.

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, USCIS 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, USCIS will consider net current assets as an alternative method of demonstrating the ability to pay the proffered wage.

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<sup>4</sup> It is noted that the petitioner submitted its 2005 tax return. However, the 2005 tax return is for the year prior to the priority date of June 5, 2006, and therefore, it has limited probative value when determining the petitioner’s continuing ability to pay the proffered wage from the priority date. Therefore, the AAO will not consider the petitioner’s 2005 income tax return when determining the petitioner’s ability to pay the proffered wage from the priority date except when considering the totality of the circumstances affecting the petitioning business if the evidence warrants such consideration.

Net current assets are the difference between the petitioner's current assets and current liabilities.<sup>5</sup> A corporation's year-end current assets are shown on Schedule L, lines 1 through 6 and include cash-on-hand. 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 tax returns demonstrate its end-of-year net current assets for 2006, as shown in the table below.

In 2006, the Form 1120 stated net current assets of \$0.

Therefore, for the year 2006, the petitioner did not have sufficient net current assets to pay the difference of \$19,915 between the proffered wage of \$24,960 and the actual wages paid to the beneficiary of \$5,045 in 2006. The petitioner has already established its ability to pay the proffered wage in 2007 from its net income.

Therefore, from the date the Form ETA 9089 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets except for 2006.

Counsel asserts in his brief accompanying the appeal that the petitioner has established its ability to pay the proffered wage based on its assets, based on the beneficiary's salary being already listed under salary expense, and because the drop in income was due to the remodeling of the Belz Factory Outlet World mall.

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the Form ETA 9089 was accepted for processing by the DOL. As mentioned above, the AAO will only consider the petitioner's net current assets, not its total assets, when determining the petitioner's ability to pay the proffered wage in a particular year. As the petitioner did not show any net current assets in 2006, the petitioner has not established its ability to pay the proffered wage in 2006. In addition, although the beneficiary's wages were included in the petitioner's salary expenses, the petitioner only paid the beneficiary \$5,045 in 2006. Therefore, the petitioner was obligated to show that it had sufficient funds to pay the remaining \$19,915 to the beneficiary in 2006. The petitioner has not shown that it had sufficient net income or net current assets to pay the remaining \$19,915 in 2006. Furthermore, with regard to the petitioner's loss of income due to the remodeling of the Belz Factory Outlet World mall, the petitioner has not shown specifically how the remodeling affected its sales or income. The petitioner has not submitted any

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<sup>5</sup>According to *Barron's Dictionary of Accounting Terms* 117 (3<sup>rd</sup> 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.

evidence that the mall was completely closed for that period of time, that the remodeling kept potential customers away, any evidence from other stores in the mall showing they also experienced a decline in sales, etc. 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)).

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. See *Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967). The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonogawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonogawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, the petitioner's tax returns indicate it was incorporated in 2003. The petitioner has provided Form 1120 for the years 2006 and 2007 with only the 2007 tax return establishing the petitioner's ability to pay the proffered wage of \$24,960. In addition, the petitioner's tax returns are not enough evidence to establish that the business has met all of its obligations in the past or to establish its historical growth. There is also no evidence of the petitioner's reputation throughout the industry or of any temporary and uncharacteristic disruption in its business activities. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.<sup>6</sup>

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<sup>6</sup> Although not part of this decision, the AAO notes that the petitioner has filed two Forms I-129, Petition for a Nonimmigrant Worker, for the beneficiary as a H1B specialty worker. Those petitions

list the beneficiary's job title as Assistant Manager with position duties calling for the following day-to-day tasks:

Training of new and existing employees in matters related to company's policies and great customer service and satisfaction to enhance repeat customers;  
Preparation to work schedule and assignment of employees to specific duties;  
Business contact with suppliers or manufacturers;  
Control over daily and weekly inventory, stock and purchase orders;  
Coordination of sales promotion activities and preparation of merchandise displays and advertising copy;  
Preparation of daily transaction records for accountant purposes;  
Resolution regarding customer complaints related to warranties or customer service, suggestions or inquiries, using Portuguese, Spanish and English languages.

Further, the I-129 letters of support specifically noted the following education requirement:

In order to qualify for the position of Assistant Manager available at our company and to adequately perform the duties just describes, we believe that only an individual, who attained a Baccalaureate Degree in Business Administration or the equivalent, can successfully fulfill the position delineated above. Due to the professional nature of the duties to be performed and level of responsibility involved, this position cannot be trusted in the hands of an individual who does not possess the degree required.

The second Form I-129 stated a pay rate of \$46,719 per year.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

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

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Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.”

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The AAO does not agree that the beneficiary as an assistant manager in a jewelry kiosk could rise to the level of a specialty worker.

Now, with the filing of the current Form I-140, the petitioner has changed the beneficiary's duties to read “Responds to customer's inquiries regarding jewelry value and use.” The job title has been changed to that of retail manager and a pay rate of \$12 per hour or \$24,960. The AAO finds it incomprehensible that the beneficiary would now accept a pay cut (although it does not appear that the beneficiary ever received the actual proffered wage) and a lessening of responsibilities to work for the same employer. It appears that the petitioner has changed the job title, duties, and pay rate specifically in order that the beneficiary may meet the requirements of a skilled worker since it is evident that the beneficiary would not meet the requirements of a professional requiring a bachelor's degree (the beneficiary obtained his equivalent degree for the Forms I-129 based on experience which would not be acceptable for an immigrant petition). The AAO does not find it reasonable that the beneficiary will be doing a different job than that of the H1B nonimmigrant worker. The AAO will return the file to the Service Center for review of the H1B approval.



**ORDER:** The appeal is dismissed.