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U.S. Citizenship
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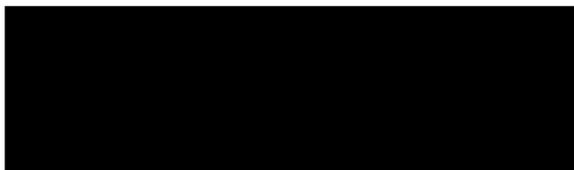
Petitioner:

Beneficiary

PETITION:

Immigrant Petition for Alien Worker as an Unskilled Worker Pursuant to Section 203(b)(3)
of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a residential care home. It seeks to employ the beneficiary permanently in the United States as a household domestic worker/caregiver. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. 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 also concluded that the petitioner had failed to establish that the beneficiary possessed the requisite qualifying work experience as of the visa priority date and denied the petition accordingly.

On appeal, the petitioner submits additional evidence and contends that the petitioner has demonstrated its financial ability to pay the proffered salary and has established that the beneficiary obtained the required qualifying employment experience as of the priority date.

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

The regulation at 8 C.F.R. § 204.5(g)(2) states:

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. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [Citizenship and Immigration Services (CIS)].

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

(ii) *Other documentation—*

- (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.

- (D) Other workers. If the petition is for an unskilled (other) worker, it must be accompanied by evidence that the alien meets any educational, training and experience, and other requirements of the labor certification. The petitioner must establish that the beneficiary has all the education, training, and experience specified on the labor certification as of the petition's priority date.

The petitioner must establish that the beneficiary has all the education, training, and experience specified on the labor certification as of the petition's priority date. The petitioner must also demonstrate that it has the continuing ability to pay the proffered wage beginning on the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1971). Here, the Form ETA 750 was accepted for processing on March 30, 2000. The proffered wage as stated on the Form ETA 750 is \$1,209.87 per month, which amounts to \$14,518.44 per year. On the ETA 750B, signed by the beneficiary on February 26, 2000, the beneficiary claims to have worked for the petitioner since February 2000.

Item 14 of the ETA 750A, requires that an applicant for the position of a household domestic worker/caregiver have three months of experience in the job offered. As subsequently described on a re-advertised job offer, the position requires that the applicant assist nine developmentally disabled adults who have behavioral problems and personal hygiene needs.

Besides his employment with the petitioner, two other jobs held by the beneficiary are listed on Part B of the ETA 750. The earlier employment is stated as a "Dental Asst./Caregiver." The beneficiary's employer is given as [REDACTED] Manila, Philippines. No street address is given. The business was a dental clinic and the beneficiary's employment is claimed to have occurred from May 1995 to November 1999. His working hours are stated to be 20 hours per week, part-time. His duties are described as: "Took care of patients, provide personal hygiene, assist in their daily need."

The other job that the beneficiary claims to have held was that of a medical assistant/caregiver for a medical clinic. The name of the employer was [REDACTED]. The address is given only as [REDACTED] Philippines. The beneficiary's period of employment is stated as beginning March 1998 and running until November 1999, working 32 hours per week, part-time. His duties were stated as:

Took care of the elderly patients, assist in their daily needs of bathing, changing of clothes, provide personal hygiene, administer medication, prepare/serve their meals/snacks.

On Part 1 of the Petition for Alien Worker (I-140), filed on June 29, 2005, the petitioner states that its address is [REDACTED] and that its Internal Revenue Code (IRS) tax identification number is [REDACTED]. On Part 3 of the I-140, it is claimed that the beneficiary has no social security number and entered the United States on December 14, 1999. On Part 5 of the I-140, the petitioner states that it was established in October 1983, currently employs three full-time workers and one part-time worker, reports an annual gross income of \$170,396, and a net annual income of \$44,338.

The petitioner is structured as a sole proprietorship. A sole proprietorship is a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th Ed. 1999). In support of its continuing financial ability to pay the proffered wage of \$14,518.44 per year as of the March 30, 2000, priority date, the petitioner initially submitted partial copies of its sole proprietor's U.S. Individual Income Tax Return for 2000, 2001, 2002, and 2003. The copies consisted of page 1 and page 2 only. They reflect that the sole proprietor filed jointly with her spouse and claimed no dependents. The returns also contain the following information:

	2000	2001	2002	2003
Wages	none listed	none listed	none listed	none listed
Taxable interest	\$ 152	\$ 132	\$ 97	\$ 66
Business Income	-\$ 9,473	\$ 5,705	-\$ 8,203	\$ 6,037
Pensions and annuities	\$46,419	\$25,137	\$13,449	\$26,108
Social security benefits	\$ 8,881	\$ 3,114	none listed	\$ 4,212
Adjusted Gross Income	\$49,095	\$33,896	\$ 6,184	\$36,875

(line 33, Form 1040 for tax yrs. 2000 and 2001; line 35 for tax yr. 2002 and line 34 for tax yr. 2003)

The petitioner also provided a summary of monthly household living expenses that totaled \$2,054 per month, annualized to \$24,648 per year. In addition, the petitioner provided a personal summary of the sole proprietor's personal assets including savings of \$124,770.33, stocks, bonds, and certificates of deposit of \$14,000, a life insurance policy with a cash value of \$158,000, and real estate worth over 1.35 million dollars. The sole proprietor signed the statement on September 20, 2004.

The petitioner also provided a copy of the sole proprietor's bank statement for a period covering August 30 to September 16, 2004, a copy of a real estate market analysis for properties at [REDACTED] as well as a copy of a Form 1099 dividend statement relating to a portfolio account with Southern Company worth \$5,457.23 as of December 31, 2003 and a statement of an Oppenheimer IRA account worth \$8,123.35 as of June 30, 2004. The petitioner also submitted unaudited interim financial statements covering the 2000-2003 period. They are accompanied by a letter dated October 1, 2004, from its accountant, [REDACTED] who expresses confidence that the petitioner can afford to pay the certified wage.

The director issued two requests for additional evidence in this case. The first, dated January 27, 2006, gave the petitioner until April 21, 2006 to respond. The petitioner was requested to provide additional evidence supporting its continuing ability to pay the proffered wage in the form of annual reports, audited financial statements or federal tax returns with the appropriate signatures and dates. The petitioner was requested to provide its complete 2004 federal tax return.

Apparently referring to documentation that had been submitted in support of a previous petition filed in November 2003 and denied by the director on August 5, 2004, the director requested that the petitioner explain the discrepancies between the addresses given for the petitioner's care home(s) on the 2003 tax return and on the I-140. The director also noted that the Wage and Tax Statements(W-2) offered on behalf of the

beneficiary contained an invalid social security number of [REDACTED] but also show that Social Security and other taxes were withheld. The director requested that the petitioner provide verification from the Social Security Administration of the Social Security taxes that were withheld from the beneficiary's wages. The director also requested that the petitioner provide copies of the beneficiary's signed and dated and certified federal tax returns for the years 2000 through 2004, as well as the corresponding copies of the beneficiary's W-2s. In lieu of signed and certified tax returns, the director advised that the beneficiary's tax returns may be submitted in the form of IRS, date-stamped printouts of the tax records for the years requested.

In response, the petitioner failed to provide any verification from the Social Security Administration of actual withholdings deducted from the beneficiary's wages. The petitioner submitted a copy of the sole proprietor's 2004 individual tax return. It contains the following information:

Wages	none listed
Taxable interest	\$ 110
Schedule C (Profit or Loss from Business, line 31)	-\$17,052
Business Income (Form 1040, line 12)	-\$17,052
Pensions and annuities	\$ 26,640
Social security benefits	none listed
Adjusted Gross Income (line 36, Form 1040)	\$11,358

It is noted that the only Schedule C income reported on this tax return was derived from a care home designated as [REDACTED] on its business license located at 4189 Mustang Street in San Diego, California.

According to the copies of the beneficiary's individual tax returns provided by the petitioner, the petitioner used the number of [REDACTED] as his social security number in each of the years from 2000 to 2005. The W-2s are all issued to the beneficiary under the invalid social security number with the [REDACTED] number also annotated in handwriting on the 2000 and 2001 W-2s. The beneficiary's tax returns for 2000 through 2004 report the same amounts as wages. The 2005 tax return was not provided.

On the W-2s, the beneficiary's wages from the sole proprietor were reflected as follows:

2000	\$10,110.20
2001	\$12,873.60
2002	\$12,706.00
2003	\$14,546.00
2004	\$15,864.00
2005	\$16,304.00

The director issued a second request for evidence dated April 27, 2006. The petitioner was allowed until July 20, 2006 to respond. The director instructed the petitioner to provide 1) signed and IRS certified copies of the petitioner's federal income tax returns including all schedules and tables; 2) copies of the beneficiary's W-2s for the last 6 years that were accepted by the IRS to be submitted in a sealed IRS envelope indicating that the documents are true and correct copies of the ones that were filed; and 3) copies of the petitioner's California Employment Development Department (EDD) Form DE-6, Quarterly Wage Reports for all employees for the last 24 quarters to be submitted in a sealed EDD stamp indicating that the contents are true and correct copies.

In response, the petitioner provided certified IRS copies of the petitioner's tax returns for 2001 through 2004, which corresponded to the figures reflected on the first two pages of the returns previously submitted and additionally included the complete corresponding attachments. The petitioner failed to provide the EDD Form DE-6 copies requested by the director and failed to provide IRS certified copies of the beneficiary's W-2s. Counsel's transmittal letter submitted with the response requested an additional thirty days in order to submit the EDD documents, which had not been received. In support of this request, counsel submitted a copy of the sole proprietor's May 15, 2006 letter to the state EDD requesting the copies. She identifies her California Employment Identification Number as [REDACTED] and asks that the EDD provide the requested information to CIS. Counsel also provided a copy of the beneficiary's letter to the IRS requesting the W-2s and the IRS' reply stating that the beneficiary's address did not agree with their records and that further identification would be needed.

In support of the beneficiary's acquisition of three months of experience as a household domestic worker/caregiver as of the March 30, 2000 priority date set by the ETA 750A, the petitioner submitted three letters purporting to verify the beneficiary's employment history. A letter dated July 10, 2004, from [REDACTED] of the CCMG Diagnostic Center at [REDACTED] QC, Philippines, certifies that:

[The beneficiary] worked as a Medical Assistant from March 1998 up to November 1999, 32 hours / 4 days a week.

His duties are as follows: Handling patients' appointments, taking temperature, blood pressure as the patient arrives in the clinic.

He also prepares all the necessary things needed for the patients' visit to the clinic, as well as assist elderly disabled (wheelchair borne) patients.

A letter dated June 15, 2004, from [REDACTED] DMD" was submitted to the record. It also certifies that:

[The beneficiary] worked for me as a dental assistant from May 1995-Nov. 1999. He was working 3 days a week as part time and earning 7,000 pesos a month. He performed the following duties: sterilization of instruments, taking x-rays of patients, giving OHI(oral hygiene instructions to the patients, assisting the dentist,

setting up dental instruments to be used for amalgam fillings, composite fillings, oral prophylaxis and tooth extractions.

In order for him to do his duties he used the following instruments and machines: dental chair, autoclave, x-ray machines, sterilizers and other dental instruments. He is a very diligent worker.

It is noted that based on other documents contained in the record, [REDACTED] appears to be married to the beneficiary.¹ Her letter is on a letterhead titled [REDACTED] Dental Clinic General Dentistry and Orthodontics” with a Cavite, Philippines address, but also contains two notary stamps. One is signed by the beneficiary who affirms that the letter was “subscribed and sworn before me (beneficiary’s name) in San Diego, CA on July 21, 2004,” instead of the date on the letter. It is also noted that his notary stamp contains no designation of a seal representing his authorization from the state of California as a notary or the date his commission expires.² Rather another stamp belonging to [REDACTED] is placed underneath the beneficiary’s. It does not make any representation of attestation of [REDACTED] signature.

A third letter was also provided to the record. It is dated August 27, 2004, and is notarized and signed by [REDACTED], [REDACTED] certifies that the beneficiary volunteered in caring for her ailing sister [REDACTED] from April 15, 1999 through July 18, 1999 and again from December 16, 1999 through February 16, 2000. She claims that he worked 40 hours per week and was compensated by free board and lodging and a small amount of pocket money. She states that he administered medicines, assisted with her bathing personal hygiene, meals, housekeeping, laundry, exercise, and arranging medical and dental appointments.

The director denied the petition on August 10, 2006. The director noted that the discrepancies between the social security numbers on the beneficiary’s W-2s and his tax returns. He stated that since conflicting data had been submitted relating to the beneficiary’s tax information, further verification of the wages paid to the beneficiary in the form of certified copies of the state quarterly wage reports and IRS certified copies of the W-2s had been sought from the petitioner but had not been provided. Therefore, the director examined the petitioner’s income and household expenses as previously supplied within the documentation submitted to the record and concluded that the petitioner had not established its ability to pay the proffered wage.

The director further determined that the petitioner had failed to demonstrate that the beneficiary possessed the qualifying three months of employment experience as a household domestic worker /caregiver as required by the terms of the approved labor certification as of the March 30, 2000, priority date. The director notes that the experience claimed to have gained during the dates alleged by [REDACTED] in California conflict with the dates of the beneficiary’s employment mentioned in the letters from both [REDACTED] and Dr. [REDACTED] indicating that the beneficiary was in the Philippines working two part-time jobs. The

¹ It is unclear whether [REDACTED] has a familial tie to the beneficiary

² Pursuant to West’s Ann. Cal. Gov. Code § 8201 and according to the website [REDACTED] relating to the application form for notary publics, an alien possessing an “A number” and valid Social Security number could be a notary but the form specifically states that a work permit, visa, or investor’s visa does not meet this requirement. It appears unlikely that the beneficiary is authorized to act as a notary.

director further noted that the petitioner had affirmed in the I-140 that the beneficiary arrived in the United States on December 14, 1999.

On appeal, the petitioner, through counsel, submits copies of the previously submitted documentation. He also provides a copy of a letter dated August 10, 2006, (the date of the director's denial) signed by the sole proprietor and directed to the EDD again asking for certified copies of the last 24 quarters of the Form De-6 quarterly wage reports listing all employees. In this letter, she gives her California business identification number as [REDACTED]

This letter is stapled to the EDD's reply to this request. Counsel contends on appeal that the petitioner demonstrated its ability to pay the proffered wage.

It is noted that the sole proprietor's earlier request of May 15, 2006 to the EDD had erroneously provided a federal tax identification number rather than the California number, which was not requested, according to the date of the letter, until the director's final decision on August 10, 2006. The petitioner was aware as early as the director's first request for evidence in January 2006 that the issue of the conflicting social security numbers and documentation of the beneficiary actual wages paid was an issue. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the EDD evidence submitted for the first time on appeal.

Counsel contends on appeal that CIS did not acknowledge receipt of certified IRS documents relating to the beneficiary. We do not concur. As noted above, the director requested certified IRS printouts of the beneficiary's W-2s for the last 6 years to be submitted in a sealed envelope. The only documents provided were copies of the beneficiary's letter requesting the W-2s and a reply from the IRS stating that the beneficiary had provided a conflicting address than the one shown in their records, and that they requested additional identification. In view of the above, we cannot disagree with the director's decision to decline to consider the beneficiary's uncertified tax returns or W-2s reflecting inconsistent and invalid social security numbers as reliable evidence of the existence and amount of wages paid to the beneficiary. For that reason, only the petitioner's financial documentation will be considered.

If the petitioner does not establish that it may have employed and paid the beneficiary an amount at least equal to the proffered wage during a given period, CIS will 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). 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. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income.

When a petitioner is a sole proprietorship, additional factors will be considered. Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. See *Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). Therefore the sole proprietor's adjusted gross income, assets and personal liabilities are also considered as part of the petitioner's ability to pay. Sole proprietors report income and expenses from their businesses on their individual (Form 1040) federal tax return each year. The business-related income and expenses are reported on Schedule C and are carried forward to the first page of the tax return (line 12). Sole proprietors must show that they can cover their existing business expenses as well as pay the proffered wage out of their adjusted gross income or other available funds. In addition, sole proprietors must show that they can sustain themselves and their dependents. *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Such petitions often include a summary of household expenses. In this case, the petitioner indicated that the sole proprietor's expenses were approximately \$24,648 per year.

In *Ubeda*, 539 F. Supp. at 650, the court concluded that it was highly unlikely that a petitioning entity structured as a sole proprietorship could support himself, his spouse and five dependents on a gross income of slightly more than \$20,000 where the beneficiary's proposed salary was \$6,000 or approximately thirty percent (30%) of the petitioner's gross income.

Regarding the documentation submitted to the underlying record consisting of unaudited interim financial statements, it is noted that such financial statements are not persuasive evidence of a petitioner's ability to pay the certified wage. According to the plain language of 8 C.F.R. § 204.5(g)(2), where the petitioner relies on financial statements as evidence of a petitioner's financial condition and ability to pay the proffered wage, *those statements must be audited*. By their own terms, the interim financial statements are similar to a compilation and are based on the representations of the entity's management. A compilation is a presentation of financial information that is not accompanied by an accountant's assurance as to conformity with *generally accepted accounting principles* (GAAP). It is restricted to information based upon the representations of management. See *Barron's Accounting Handbook*, 370-371 (3rd ed. 2000). As these documents are not audited as required by the 8 C.F.R. § 204.5(g)(2), they are not sufficiently probative of the petitioner's ability to pay the proffered wage during the period represented.

It is also noted that the financial information provided to the record relates to the real estate held by the sole proprietor consisting of the petitioner's location of business and the sole proprietor's personal residence. Although CIS will consider a sole proprietor's overall personal assets and liabilities, they must represent cash or cash equivalent assets that would be a readily available resource out of which the proffered wage could be paid. Real estate is considered a long-term asset and is not readily convertible to be available to pay the proffered wage. Moreover, if it is considered part of a petitioner's total depreciable assets used in the

business, it would not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage.

That said, it appears that the sole proprietor's principal portfolio account at Southern Company worth approximately \$5,400 in December 2003 could be applied to the consideration of payment of the proffered wage in that year. Similarly, the approximately \$8,000 held in the Oppenheimer account as of August 2004 could also be considered toward payment of the certified wage in that year. While it is noted that for a given month in 2004, the sole proprietor had a significant amount showing in a bank statement in September 2004 (\$124,770.53), the evidence also suggests that the petitioning business has received large payments of compensation from other entities³ in the ordinary course of business, which would be already be incorporated on Schedule C of the corresponding tax return and would be offset by the reported expenses and deduction and carried forward to line 12 (business income) of the Form 1040. For that reason, without more, the bank balance during the one-month period reported in 2004 will not be considered as part of the sources available to pay the proffered wage in 2004. It is noted that no first-hand documentation was submitted to show the existence or value of any insurance policy as stated in the sole proprietor's individual summary of her assets. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In this case, as reflected on the sole proprietor's tax return, in 2000, the petitioner demonstrated its ability to pay the proffered wage with the remaining \$24,447 left after accounting for the living expenses out of the reported adjusted gross income of \$49,095.

In 2001, after covering living expenses, the remaining \$9,248 applied to the payment of the proffered wage left a shortfall of \$5,270.44.

In 2002, the sole proprietor's reported adjusted gross income \$6,184 was substantially less than the certified salary of \$14,518.44 and the petitioner's household expenses of \$24,648.

In 2003, \$12,227 would remain after covering living expenses from the adjusted gross income of \$36,875. This represents a shortfall of \$2,291.44 in order to pay the proffered wage of \$14,518.44. If the sole proprietor's portfolio account of \$5,400 were considered, however, the deficit of \$2,291.44 would be covered and the petitioner's ability to pay the proposed wage offer of \$14,518.44 is demonstrated for this year.

The sole proprietor reported adjusted gross income of \$11,358 in 2004. This fell well short of the sums needed to cover payment of the sole proprietor's living expenses and the proffered salary. Even considering the remaining amount of the portfolio account from Southern Company (approximately \$3,100) and the approximately \$8,100 in the Oppenheimer account as additional resources, the available total of approximately \$22,558 would still be insufficient to pay the proffered wage as well as the sole proprietor's household expenses.

³ A Form 1099-Misc. Income for 2001 shows that the petitioner received \$175,119.08 from San Diego-Imperial Counties Developmental Services, Inc.

On appeal, counsel asserts that *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967) is applicable in this matter. In *Matter of Sonegawa*, an appeal was sustained where the expectations of increasing business and profits supported the petitioner's ability to pay the proffered wage. Counsel refers to the petitioner's increase in gross income from 2001 to 2004, the operation of two board and care homes and the fact that the wages exceed the proffered wage.

It is noted that the *Sonegawa* case, however, related to petitions filed during uncharacteristically unprofitable or difficult years within a framework of profitable or successful years. During the year in which the petition was filed, the *Sonegawa* petitioner changed business locations, and paid rent on both the old and new locations for five months. There were large moving costs and a period of time when business could not be conducted. The Regional Commissioner determined that the prospects for a resumption of successful operations were well established. He noted that the petitioner was a well-known fashion designer who had been featured in *Time* and *Look*. Her clients included movie actresses, society matrons and Miss Universe. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. In this case, counsel fails to cite any similar uncharacteristic losses or outstanding industry reputation as was noted in the exceptional circumstances cited in *Sonegawa*. Although the petitioner claims to have been in operation since 1983, the seven tax returns contained in the record do not represent a framework of profitable years analogous to the *Sonegawa* petitioner. Here, the petitioner's business operation is very small with three workers and one part-time worker. The fact that the cumulative wages may exceed the proffered wage is not relevant as the proffered wage is an additional new expense. As set forth on Schedule C of the tax returns, the petitioner reported net losses in 2000, 2002, and 2004. The remaining years were of 2001 and 2003 saw very modest profits of \$5,705 and \$6,037, respectively. The sole proprietor's adjusted gross income was similarly modest with a reported low of \$6,184 to a high of \$49,095. The AAO cannot conclude that the petitioner has demonstrated that such unusual circumstances have been shown to exist in this case, which parallel those in *Sonegawa*.

In this matter, it may be concluded that the petitioner demonstrated its ability to pay the proffered wage in 2000 and in 2003, but did not establish its continuing financial ability to pay the proposed wage in 2001, 2002 and 2004.

Regarding the beneficiary's acquisition of qualifying employment experience as of the priority date of March 30, 2000, on appeal, counsel submits an affidavit signed by the beneficiary. He affirms the description of the duties that he performed that were set forth in the July 10, 2004, letter from [REDACTED] and the June 15, 2004, letter from [REDACTED]. The beneficiary, however, states that he was in the United States before the December 14, 1999 date set forth on the I-140. He claims that he came to the United States in April 1999 and stayed until July 21, 1999, when he returned to the Philippines. He characterizes this as a vacation but states that when he visited his late mother in Torrance, California, in a retirement facility, she arranged for him to take care of [REDACTED], a sister of her friend [REDACTED] in exchange for room and board and pocket money. The beneficiary then describes his performance of duties that were previously set forth in [REDACTED] letter as noted above. He adds that when he returned to the United States in December 1999, he continued to work for the sister of [REDACTED] until February 2000, when the petitioner hired him.

Along with the beneficiary's affidavit, the petitioner submitted a copy of a U.S. visa issued on March 26, 1999 and copies of two pages of the beneficiary's passport. One page bears a stamp of "B-2 June 13, 2000" and the other page shows an arrival date in the Philippines of July 23, 1999 and a departure date of December 14, 1999. No pages were submitted to show a departure date in April from the Philippines or an arrival date in the United States.

It is further noted that the ETA 750 submitted by the petitioner and signed under penalty of perjury by the petitioner and the beneficiary instructs the signer on Part B to "List all jobs held during the past three years. Also list any other jobs related to the occupation for which the alien is seeking certification as indicated in item 9." It is noted that Part B, signed by the beneficiary on February 26, 2000, completely omits the qualifying employment with [REDACTED], which he now states to have occurred during his three-four month vacation in the United States during April - July 1999 and subsequently from December 1999 to February 2000. The two periods of part-time employment that are listed with the two [REDACTED] on the ETA 750B also fail to mention this extended absence during the period of time claimed which is alleged to have occurred during the beneficiary's time in the United States and the description of duties in each letter and duration of such employment subsequently claimed by the beneficiary in his affidavit on appeal differs significantly from the nature and kind of employment described in the ETA 750B. It is noted that it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). We find that the beneficiary's claim of employment as a part-time medical assistant and part-time dental assistant do not establish his credentials as a household domestic worker / caregiver and the subsequent claim of employment and the [REDACTED] letter do not outweigh the lack of credibility arising from the inconsistencies and omissions appearing on the ETA 750B, certified by the DOL, where the qualifying employment should have been claimed.⁴ This office concurs with the director's assessment that the petitioner has not established that the beneficiary possessed the requisite qualifying employment experience as of the priority date. Further, in this matter, the documentation submitted does not satisfy the requirements set forth in 8 C.F.R. § 204.5(g)(2) and does not establish the petitioner's continuing financial ability to pay the full proffered salary.

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.

ORDER: The appeal is dismissed.

⁴ See also *Matter of Leung*, 16 I&N 12, Interim Dec. 2530 (BIA 1976)(decided on other grounds; Court noted that applicant testimony concerning employment omitted from the labor certification deemed not credible.)