

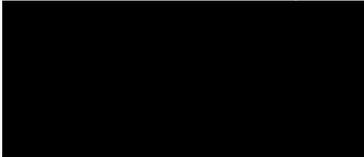
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 22 2005
WAC 03 012 53077

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

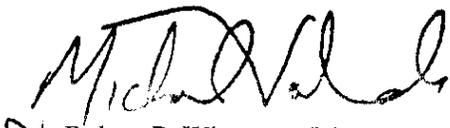
PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the employment-based visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a wholesaler and importer of decorative house items. It seeks to employ the beneficiary permanently in the United States as a carpenter. 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 and denied the petition accordingly.

On appeal, counsel states that the petitioner has the ability to pay the proffered wage and submits further documentation.¹

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 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(l)(3) also provides

(ii) Other documentation--

(D) *Other Worker.* If the petitioner 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 regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

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

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 CFR § 204.5(d). Here, the Form ETA 750 was accepted for processing on February 20, 2001. The proffered wage as stated on the Form ETA 750 is an hourly wage of \$18.52, or an annual salary of \$38,522.² On the Form ETA 750B, signed by the beneficiary, the beneficiary claimed to have worked for the petitioner since 1998.

¹ Eli A Rich, named as counsel on the initial I-140 petition, is listed as inactive with the California State Bar. Therefore the petition is considered self-represented.

² The beneficiary's proffered wage is rounded to the nearest whole number.

On the petition, the petitioner claimed to have been established in 1984, to have eight employees, and to have a gross annual income of \$1,515,183. In support of the petition, the petitioner submitted a letter of support that stated the beneficiary had worked with Buyers Consolidators in the Philippines from January 1995 to February 1997 as a crater/warehouseman and outlined the beneficiary's duties there. The petitioner also submitted a letter from the beneficiary's employer in the Philippines. With regard to the petitioner's ability to pay the proffered wage from the priority date onward, the petitioner submitted IRS Forms 1120S, the petitioner's corporate income tax return, for 2000 and 2001. In addition, the petitioner submitted Forms DE-6, Quarterly Wage Report for the final two quarters of 2001 and first two quarters of 2002, along with IRS Forms 941, Employer's Quarterly Federal Tax Return. Finally the petitioner submitted the beneficiary's W-2 Forms for 1998, 1999, 2000, and 2001, along with copies of the beneficiary's paychecks from the end of June 2002 to September 2002. The 2001 W-2 form reflects that the petitioner paid wages of \$26,506.69 to the beneficiary in that year. As of September 7, 2002, the beneficiary had earned \$17,213.

Because the director deemed the evidence submitted insufficient to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, on December 23, 2003, the director requested additional evidence pertinent to that ability. The director specifically requested that the petitioner provide evidence of its ability to pay the proffered wage in 2002. The director also stated that Citizenship and Immigration Services (CIS) files indicated that the petitioner had filed at least two 1-140 petitions. The director requested that the petitioner submit evidence to establish that the petitioner has the ability to pay or had been paying the proffered wages of all beneficiaries listed on the filed petitions. The director also requested EDD Forms DE-6 for all employees for the first two quarters of 2001 and for the third quarter of 2002. The director requested that the forms include the names, social security numbers, and number of weeks worked for all employees. The director also requested the beneficiary's IRS Forms W-2 for 2002. The director finally requested clarification as to whether the position was a crater or carpenter position, and clarification as to the proffered wage.

In response, counsel submitted IRS Form 1120S, the petitioner's corporate tax returns for the years 2001 and 2002; the beneficiary's W-2 Forms from 1998 to 2003, reflecting wages paid by the petitioner in the amount of \$24,442, \$24,917, and \$26,507 for the years 2001, 2002, and 2003, respectively; Forms DE-6 for the final three quarters of 2003; and monthly statements from the petitioner's checking account from January 2001 to December 2003.²³ Counsel listed the average monthly wages that the petitioner paid the beneficiary in 2001, 2002, and 2003, as well as the projected average monthly wage if the proffered wage had been paid in 2001, 2002, and 2003. Counsel then examined the difference between the beneficiary's actual monthly wage and the projected monthly wage based on the proffered salary for 2001, 2002, and 2003. According to counsel, the monthly difference in wages was \$1,001.24 in 2001, \$1,173.26 in 2002 and \$1,133.71 in 2003. Counsel then listed the petitioner's monthly balances from its checking account from Union Bank of California for the years 2001 to 2003, and stated that the petitioner maintained substantial cash assets in its bank account to cover the difference between the projected monthly proffered wages and the actual wages received by the beneficiary from January 2001 to the present.

² The beneficiary's actual wages are rounded to the nearest whole number.

³ Although counsel identified the bank account as a savings account, the bank documents identify the account as a checking account.

Counsel stated that CIS has generally and liberally accepted bank statements as acceptable evidence in establishing the petitioner's ability to pay proffered wages, and referred to an unpublished AAO decision in which bank statements provided by a petitioner were found to be persuasive evidence that the petitioner had the ability to pay the proffered wage.⁴ Counsel also submitted documentation to clarify the position's title and proffered wage. With regard to multiple beneficiaries, counsel stated that the petitioner had petitioned for one other individual who was also employed by the petitioner and was in the process of adjusting to permanent resident status. Counsel stated that the fact that this individual had been paid by the petitioner was in itself evidence that the petitioner could afford to pay all the beneficiaries of the petitioner's immigrant petitions. Counsel submitted no further documentation to further substantiate his assertions with regard to multiple beneficiaries.

On February 12, 2004, the director denied the petition. The director examined the petitioner's federal income tax returns for 2001 and 2002 and noted that the petitioner had net income of -\$78,168 in 2001 and -\$87,330 in 2002. The director also noted that in both years, the beneficiary was paid less than the proffered wage. Nevertheless, the director determined that the petitioner in 2001 was marginally able to establish its ability to pay the beneficiary's proffered wage, while the petitioner was not able to establish its ability to pay the proffered wage in 2002.⁵ With regard to the year 2001, the director also stated that CIS electronic records indicated that the petitioner had filed other I-140 and I-129 petitions that were recently approved, and thus the petitioner, based on these multiple beneficiaries, had not established its ability to pay the proffered wage in 2001. The director examined the monthly bank statements from Union Bank of California and stated that although the bank statements might demonstrate how much money the petitioner had on a given date, they did not indicate what debts the petitioner was obliged to pay.

On appeal, counsel states the petitioner is involved with the direct import and wholesale of fine home decorative accessories from Asia, and that about 86 per cent of its imports come from Thailand and another 15 per cent is imported from Korea. Counsel states that the years 2001 and 2002 were uncharacteristic and unusual years for the petitioner, as well as many companies due to the economic setback and spillover effects from September 11, 2001. Counsel submits a letter from the petitioner that states its financial bottom line in 2001 and 2002 were affected by a drop in sales during these two years. Counsel states that the September 11, 2001 terrorist attacks caused a tremendous turmoil in the U.S. economy and one of the most affected industries was the import/export product industry due to "overseas flight risk." Counsel provides a list of the petitioner's gross income and net income for the years 1996 to 2003. This list shows the following gross and net income for the petitioner:

Year	Gross Income	Net Income
1996	\$ 946,363	\$ 72,274

⁴ Although counsel described this decision as published, it is an unpublished decision. Although the AAO provides copies of decisions to petitioners and their counsel, stamped "public copy," this stamp does not denote that the decision is a published precedent decision.

⁵ The director's use of the word "marginally" in his decision is misleading. If the petitioner's net income or net current assets are sufficient to either pay the proffered wage or the difference between the proffered wage and the actual wage, the petitioner has met his burden of proof. The AAO will examine the petitioner's net current assets further in these proceedings and whether these net current assets are sufficient to establish the petitioner's ability to pay the wage in 2001 and onward.

1997	\$1,053,459	\$ 8,974
1998	\$1,152,433	\$ 38,278
1999	\$1,251,062	\$ 68,181
2000	\$1,625,254	\$104,078
2001	\$1,458,391	\$ -78,168
2002	\$1,520,535	\$ -87,330
2003	\$1,336,384	\$ 30,486

Counsel states that the years 1996 to 1998 were stable years and that the company progressed in both its gross income and assets. Counsel also states in the year 2000, a year that the petitioner considers one of its best years, the petitioner's gross income jumped 23 percent and its net income increased by 35 percent. According to counsel, the petitioner's sales decreased by 11 percent in 2001 which affected its net income.

Counsel cites to *Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967), and to *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049 (S.D.N.Y. 1986). With regard to *Elatos*, counsel states that *Elatos* is not analogous to the instant petition because the petitioner in *Elatos* asserted a certain amount of net income but never presented proof/evidence of such income. Counsel states that the petitioner has submitted its income tax returns and also other financial documentation to establish its ability to pay the proffered wage. Counsel states that *Matter of Sonogawa* is more applicable to the instant petition, and cites the principal finding of *Sonogawa* that the approval of a visa petition is not precluded by the fact that the petitioner's net profit for the previous year is not commensurate with the salary specifications of the labor certification where it is found that the petitioner's business has increased; and that the petitioner's expectations of continued increase in business and profits are reasonable expectations. Counsel states that the petitioner's overall performance since its inception shows that the years 2001 and 2002 are uncharacteristic and unusual years.

Counsel also states that CIS gauges a petitioner's ability to pay the proffered wage by mechanically comparing the petitioner's net income, as recorded in the petitioner's federal income tax returns, to the proffered wage, and that the petitioner's other financial documents, namely its bank statements, can be examined to establish the petitioner's ability to pay the proffered wage. Counsel describes the petitioner's bank statements as "primary evidence", and states that the cash ending balances in the petitioner's bank account are computed after the deduction of all cash withdrawals, corresponding to all variable expenses and financial obligations/debts. Based on this analysis of the petitioner's bank statements, counsel states that the cash ending balances reflected in the petitioner's bank statements are totally and readily available for payment of the beneficiary's proffered wage.

Counsel also states that other factors should be considered, such as the company's overall performance since its inception, its uncharacteristic and unusual business operations during the years 2001 and 2002, and the liquid financial assets of the petitioner. Finally counsel states that the denial of the immigrant petition will adversely affect the petitioner's business operations, and that the Department of Labor has determined that there are no United States workers available for the position of crater/carpenter. Counsel again refers to a prior AAO decision that he describes as "published" and states that the decision is evidence that CIS considers bank statements as acceptable evidence in establishing the petitioner's ability to pay.

Counsel submits the petitioner's Forms 1120S from 1996 to 2003; the beneficiary's W-2 Forms for 1998 to 2003; the petitioner's show calendar for the years 2003 and 2004 and applications to participate in various U.S. gift fairs; a 17-page Aging Summary Report of accounts receivable that indicates that as of February 23, 2004, the petitioner had \$152,321 in accounts receivable; and brochures of the petitioner's sales products. Counsel resubmits the petitioner's monthly bank statements from Union Bank of California.

Counsel's reliance on the balances in the petitioner's bank checking account is misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. Contrary to counsel's assertion, bank statements are not included in the three principal types of evidence listed. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Counsel's assertion that the petitioner's monthly ending balances, computed after the deduction of all cash withdrawals, corresponding to all variable expenses and financial obligations/debts, are readily available to pay the proffered wage, is not found persuasive. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax return, such as the cash specified on Schedule L that will be considered below in determining the petitioner's net current assets.

Counsel refers several times to a decision issued by the AAO concerning the use of bank statements to establish the petitioner's ability to pay the proffered wage, but does not provide its published citation. While 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

In determining the petitioner's ability to pay the proffered wage during a given period, CIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. Although the petitioner submitted W-2 salary statements for the beneficiary for the years 1998 to 2003, since the priority date for the petition is February 20, 2001, the beneficiary's salary and the petitioner's financial resources in the years 1998 to 2000 are not dispositive in the present proceedings. Therefore, only the IRS W-2 forms from 2001, 2002, and 2003 are considered in this proceeding. Based on these documents, the petitioner paid the beneficiary an annual salary of \$26,507 in 2001, \$24,442 in 2002, and \$24,917 in 2003.⁶ In 2001, the beneficiary's salary was \$12,014 less than the proffered wage, in 2002, the beneficiary's salary was \$14,079 less than the proffered wage in 2002, and in 2003, the beneficiary's salary was \$13,605 less than the proffered wage.

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

⁶ The beneficiary's salary for 2001 and 2002 was rounded to the nearest whole number.

v. Palmer, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient. In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now CIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. As noted previously, the wage and tax documentation submitted by the petitioner for the years 1998 to 2000 are not relevant to these proceedings. Therefore, only the petitioner's 2001, 2002, and 2003 federal income tax returns are considered with regard to its net income.

The evidence indicates that the petitioner is structured as an S corporation. For an S corporation, CIS considers net income to be the figure shown on line 21, ordinary income, of the IRS Form 1120S. The petitioner's tax returns show the following amount of ordinary income: -\$78,168 in 2001, -\$87,330 in 2002, and \$30,486 in 2003. The petitioner's net income figures for 2001 and 2002 fail to establish the ability of the petitioner to pay the proffered wage, based on its net income. Based on its net income in 2003, the petitioner had sufficient net income to pay the difference between the beneficiary's actual wage and the proffered wage, namely \$13,605. However, a petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). As discussed previously, the petitioner did not establish that it had sufficient net income in 2001 or 2002 to pay the difference between the actual wage and the proffered wage of the beneficiary.

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

Net current assets are the difference between the petitioner's current assets and current liabilities.⁷ A corporation's year-end current assets are shown on Schedule L, lines 1(d) through 6(d). Its year-end current liabilities are shown on lines 16(d) through 18(d). If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets.

The petitioner submitted the following information for tax years 2001, 2002, and 2003:

⁷ According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

	2001	2002	2003
Ordinary Income	\$ -78,168	\$ -87,330	\$ 30,486
Current Assets	\$ 757,424	\$ 794,830	\$ 878,301
Current Liabilities	\$ 742,381	\$ 877,595	\$ 948,849
Net current assets	\$ 15,043	\$ - 82,765	\$ -70,548

The petitioner has not demonstrated that it paid the full proffered wage to the beneficiary in 2001. However, the petitioner established that it paid the beneficiary \$26,507 in 2001, or \$12,014 less than the proffered wage of \$38,521. In 2001, the petitioner shows a net income of -\$78,168 and net current assets of \$15,043. In 2001 the petitioner had sufficient net current assets to pay the difference between the beneficiary's actual wages and the proffered wage, namely, \$12,014. Nevertheless, in the director's request for further evidence and in his denial, the director referred to additional petitions that the petitioner had submitted for other workers. The director stated that both I-140 immigrant petitions and I-129 non-immigrant petitions were involved. These petitions are not currently available to this office. The petitioner acknowledged that one other worker had been approved for a visa; however the petitioner provided no further information as to the job duties or proffered wage to be paid to the I-140 beneficiary. In order to establish the eligibility of multiple immigrant visa petitions, the petitioner must show, at the very least, the ability to pay the proffered wages of both I-140 beneficiaries, one of which is the beneficiary of the instant petition. In the instant petition, the petitioner has only established that it could pay the difference between the beneficiary's actual wages and the proffered wage in 2001. The petitioner has not provided sufficient evidence to establish that he could pay the wages of the beneficiary, and any other approved or pending I-140 petitioners. Therefore the petitioner has not established that it has the ability to pay the proffered wage as of the priority date.

In 2002, the petitioner has net income of -\$87,330 and net current assets of -\$82,765. Thus, the petitioner did not have sufficient funds to pay any part of the difference between the beneficiary's actual wage and the proffered wage in 2002, from its net income or net current assets. In 2003, the petitioner had net income of \$30,486. As stated previously, this net income is sufficient to pay the difference between the beneficiary's 2003 actual wages and the proffered wage. However, as with the petitioner's net current assets in 2001, it is not established in the record that the petitioner had sufficient net income to pay both the difference between the beneficiary's actual wages and the proffered wage, and the wages for any other I-140 beneficiary.

As previously stated, the funds identified in the petitioner's monthly bank account statements are not considered additional sources of funds to pay the difference between the beneficiary's actual wages and the proffered wages in either 2001 or 2002, as well as the difference in wages for any other beneficiaries currently employed by the petitioner. Therefore, the petitioner has not demonstrated that any other funds were available to pay the proffered wage. The petitioner has not, therefore, shown the ability to pay the proffered wage during the salient portion of 2001 and continuing to the present date. Therefore, the petitioner has not established that it had the continuing ability to pay the proffered wage beginning on the priority date.

On appeal, counsel cites *Matter of Sonogawa*, and requests that the instant petition be considered within the context of two unprofitable years within a pattern of profitable years. In considering other factors beyond the

petitioner's income tax return and the petitioner's net income or net current assets, the petitioner still has the burden of establishing through evidentiary documentation any assertions made with regard to profitable and unprofitable years. In this regard, many of counsel's assertions are either unfounded or not substantiated with sufficient documentation.

For example, on appeal, counsel states that the years 1996 to 1998 were profitable years, with increasing gross profits and assets; however, the graph submitted by counsel indicates that while the petitioner's gross income increased from 1996 to 1998, in 1997, the petitioner had a sharp decline in its net income from the previous year. The petitioner's net income in 1996 was \$72,271, while its net income in 1997 was \$8,974. The subsequent year of 1998, the petitioner shows a net income of \$38,278. In examining the petitioner's net current assets for 1997, the petitioner's current assets were \$631,435 while its current liabilities were \$726,784. Accordingly, the petitioner's net current assets in 1997, were -\$95,349. The petitioner's net current assets for 1996 and 1998 were also negative. Thus, contrary to counsel's assertions, the petitioner's net income as well as its net current assets did not always increase during the years 1996 to 1998. While not mentioned by counsel, in reviewing the petitioner's 2001 income tax, it is noted that one new expense documented on the petitioner's 2001 Form 1120S on Item 7 that is not shown on either the previous tax return or the following tax return, namely, the \$96,000 compensation of officers, contributed to the petitioner's expenses which in turn caused the petitioner to have a negative net income in 2001.

Both counsel and the petitioner assert that the lack of sales during 2001 and 2002 was the source of the petitioner's unprofitability, and counsel also states that overseas flight risk was another factor that impacted the petitioner's net income in 2001 and 2002. Nevertheless, neither the petitioner nor counsel provided any evidentiary documentation with regard to loss of sales orders in the months following September 11, 2001, or any further explanation of how overseas flight risk affected the petitioner's business in either 2001 or 2002. The assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Simply 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)). Upon review of the record, the petitioner has not provided sufficient documentation to establish that its circumstances are analogous to those of *Sonegawa*. Without more persuasive evidence, the petitioner has not established that the totality of its circumstances are such that the petition should be approved.

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.