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[REDACTED]

FILE: [REDACTED]
SRC 05 004 50875

Office: TEXAS SERVICE CENTER Date: **AUG 25 2005**

IN RE: Petitioner: [REDACTED]

PETITION: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

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.

Mari Johnson

RP Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5).

The director determined that the petitioner had failed to demonstrate a qualifying, at-risk investment of lawfully obtained funds.

On appeal, counsel asserts that the petitioner's funds are all at-risk and that the petitioner has submitted sufficient evidence of the source of those funds.

Section 203(b)(5)(A) of the Act, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

- (i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
- (ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

The record indicates that the petition is based on an investment in a business, U.S. Best Food Market, Inc. (Best Food), not located in a targeted employment area for which the required amount of capital invested has been adjusted downward. Thus, the required amount of capital in this case is \$1,000,000.

INVESTMENT OF CAPITAL

The regulation at 8 C.F.R. § 204.6(e) states, in pertinent part, that:

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness.

* * *

Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

The regulation at 8 C.F.R. § 204.6(j) states, in pertinent part, that:

(2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:

- (i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;
- (ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices, sales receipts, and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;
- (iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;
- (iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or
- (v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

The regulations provide that a petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. A mere deposit into a corporate money-market account, such that the petitioner herself still exercises sole control over the funds, hardly qualifies as an active, at-risk investment. *Matter of Ho*, 22 I&N Dec. 206, 209 (Comm. 1998). Even if a petitioner transfers the requisite amount of money, she must establish that she placed her own capital at risk. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1042 (E.D. Calif. 2001)(citing *Matter of Ho*).

It is acknowledged that, unlike the petitioner in *Matter of Ho*, the business has expended funds towards becoming operational. Regardless, the case stands for the proposition that all the funds must be at risk. *Matter of Ho* states:

Simply formulating an idea for future business activity, without taking meaningful concrete action, is similarly insufficient for a petitioner to meet the at-risk requirement.

Id. at 210.

Further, the full amount of the requisite investment must be made available to the business most closely responsible for creating the employment upon which the petition is based. *Matter of Izummi*, 22 I&N Dec. 169, 179 (Comm. 1998).

On the petition, the petitioner indicated that she had made an initial investment of \$1,000,000 on May 3, 2004 and a total investment of \$1,350,000. She indicated that she owned 48.21 percent of the corporation. The directions for the petition provide that if the petitioner is not the sole owner, "list on a separate paper the names of all other parties (natural and non-natural) who hold a percentage share of ownership of the new enterprise." The initial petition was not supported by such a list. The petitioner subsequently indicated on the petition that the investment consisted of \$2,700,000 of property transferred from abroad. In the initial cover letter, counsel asserted that the petitioner was submitting evidence, as exhibit "d," "bank transfers totaling \$1,350,000 to the business account."

The articles of incorporation, which are not stamped as "filed" with the State of Maryland, indicate that Best Food is authorized to issue 100,000 shares of \$1 par value stock. The articles of incorporation are not stamped as "filed" and, thus, cannot serve as evidence of the existence of a corporation. The petitioner, however, also submitted an invoice for the incorporation costs and a confirmation of filing from the Maryland Department of Assessments and Taxation. The confirmation, however, reflects that Best Food is not a close corporation despite the statement in the articles of incorporation submitted in support of this petition affirming that Best Food "shall be a close corporation."

The business plan, which asserts that the petitioner is the majority shareholder, reflects that the startup costs for the business will include \$64,700 in startup expenses, \$455,300 in cash, \$770,000 in leasehold improvements, \$1,080,000 in refrigeration equipment from AMF Refrigeration, \$200,000 in equipment from Hobart Corporation, \$80,000 in equipment from NCR Scanmaster Systems, and \$50,000 in other long term equipment and supplies costs. The plan also acknowledges \$1,350,000 in capital from the petitioner and an additional \$1,350,000 from an unidentified party.

In support of the above claims, the petitioner submitted a May 17, 2004 letter from the Branch Manager of a Citibank branch confirming that Best Food has a business checking account with Citibank and that the petitioner "has transferred \$250,000 from her Citibank Taiwan account to this business account [REDACTED] and [the petitioner] has also transferred \$1,000,000.00 from her Citibank personal account [REDACTED] to this business account [REDACTED]. The letter does not provide any dates for these transfers.

The petitioner submitted a computer-generated statement for account #17622351 reflecting incoming wires of \$149,985 on March 23, 2004 and a deposit of \$100,000 on March 26, 2004. Check 1001 for \$60,392.85 was presented for payment April 16, 2004. A similar statement for the petitioner's personal account, [REDACTED] reflects an incoming wire for \$999,976 on May 3, 2004.

The petitioner submitted an Invoice for equipment from Hobart reflecting a down payment of \$60,392.85 due March 15, 2004. Finally, the petitioner submitted a signed lease with Marlborough Holdings, LLC, which is managed by the vice-president of Best Food, Hwa Min Pi, who also claims to be the ultimate source of the funds transferred by the petitioner, as will be discussed below. The lease, dated March 16, 2004, does not list the rent payable and identifies Fleming Companies, Inc. as the guarantor of Best Food's obligations under the lease.

On October 29, 2004, the director requested the names of the other shareholders and the percentages they control. The director also requested evidence that the \$1,000,000 placed in a money market account was at-risk. The director requested collateral and security agreements for any loans.

In response, counsel asserts that the petitioner actually owns 51 percent of Best Food. In support of that assertion, counsel references unaudited financial statements reflecting \$3,000,000 in stock. Neither counsel nor the financial statements identify the other owners of Best Food. Thus, the petitioner's submission is not responsive to the director's request in that regard.

The unaudited financial statements reflect the following long-term liabilities:

Notes Payable – New Holland	\$15,433.07
Notes Payable – Hobart	\$120,785.70
Notes Payable – AMF Refri. Prod.	\$614,228.00

The petitioner submitted invoices for the following purchases:

9/16/04 - AMF Refrigerated Products	\$718,478 (later revised up to \$721,891)
3/15/04 - Hobart Corporation	\$181,178.55
Down payment paid	\$60,392.85
6/24/04 - Office Depot	\$2,450 (total from five invoices)
6/5/05 - Pan-Link International	\$347.11
5/30/04	\$875
5/27/04	\$172.70
5/16/04	\$860
Sun-Rapid Industry	\$24,235.89

The petitioner also submitted invoices not clearly related to Best Food. Specifically, the petitioner submitted invoices from CKL Architects all dated prior to the existence of Best Food, one of which bears the notation: "Paid by Marlborough LLC in 2/28/04." The petitioner also submitted Home Depot receipts with no customer information and invoices from Gaithersburg Equipment Co. for items sold to Hwa Min Pi that do not reference Best Food or its address. We note that the record reflects that Best Food is not [redacted]'s sole business.

The petitioner also submitted another lease with Marlborough Holdings. While also dated March 16, 2004, this lease includes the square footage in the preprinted form (handwritten on the lease initially submitted) and the rent payable amounts, \$27,900 per month for the first five years. The petitioner does not explain the existence of two signed leases with the same date but different information.

In addition, the petitioner submitted the bank statements for Best Food for the period February 2004 through November 2004. These statements reflect that the wire transfer of \$149,985 was from "Bi Hua Min." The statements also reflect deposits of \$1,000,000 into account [redacted] on May 17, 2004, a wire transfer into that account for \$1,450,000 from "Hsui En Taiwa" on June 23, 2004, a transfer of \$2,400,000 into a business insured money market account (IMMA) on July 7, 2004, and a transfer back to checking of \$100,000 on

August 16, 2004. As of November 30, 2004, the most recent date documented, the IMMA account had a balance of \$2,409,660.66.

The new business plan submitted includes the following start up assets:

Current Assets	
Cash Balance on Starting Date	\$255,300
Inventory	<u>\$500,000</u>
Total Current Assets	\$755,300
Long-term Assets	
Leasehold Improvement	\$770,000
Equipment	
Husmann/AMF Refrigeration	\$1,080,000
Hobart Corporation	\$200,000
NCR Scanmaster Systems	\$80,000
Other Equipment and Supplies	<u>\$50,000</u>
Total Long-term Assets	<u>\$2,180,000</u>
Total Assets	\$3,000,000
 Total Requirements	 \$3,000,000

The funding requirements that follow include no liabilities and \$3,000,000 in total capital (\$1,530,000 from the petitioner and \$1,470,000 from "other investors"). These numbers contradict the unaudited financial statements that reflect the large long-term liabilities discussed above. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director concluded that the unaudited financial statements reflected at least \$750,446.77 in loans, for which the petitioner failed to submit collateral and security statements as requested. The director noted that most of funds credited to the petitioner remain in a savings account and are not at risk.

On appeal, counsel asserts that the March bank statement reflects the petitioner's \$250,000 investment and the May bank statement demonstrates the petitioner's \$1,000,000 investment. Counsel further asserts that these funds are sufficiently at risk. Counsel explains that prior to the influx of capital "from other investors," the petitioner's funds were responsible for the purchase of company assets amounting to \$130,000. Counsel acknowledges additional funds were then deposited, but notes that the unaudited financial statements reflect over \$1,000,000 in assets as of November 30, 2004. Regarding the large sums in savings, counsel notes that the initial inventory could not be purchased until the store was ready to open and that funds needed to be reserved for those costs. Counsel asserts that the business plan elaborates on "how the enterprise will spend the Petitioner's remaining capital investment, with the enterprise's projected budget of over \$2,700,000 for FY 2005." Counsel does not address the director's concern that the unaudited financial statements reflect large liabilities unsupported by collateral or security statements.

In support of counsel's brief, the petitioner resubmits much of the documentation already in the record of proceedings. The petitioner also submits additional invoices from Sun Rapid Industry from April 2004 and January 2005 reflecting costs of \$19,972.39 and \$5,160.60 respectively; a new invoice for Pan-Link

International dated February 10, 2005 for \$430.33; a January 27, 2005 proposal from Ed's Refrigeration & A/C for \$265,000, a February 16, 2005 check issued to Hobart for \$64,168; a February 24, 2005 check issued to Century Construction for \$30,000; and a January 30, 2005 check issued to Fancy Sign for \$20,000. Finally, the petitioner submits receipts for inspections by the Washington Suburban Sanitary Commission. All but two of these receipts relate to separate businesses located at nearby addresses in the same village center. The two receipts relating to the address for Best Food identify the "owner" as Marlborough Village Center.

The business plan does project the need for \$255,300 in cash reserves and \$500,000 in inventory (a total of \$755,300) to begin operations. In response to the director's request for additional information, however, counsel indicated that Best Food would open in March 2005. The appeal was filed in April 2005, yet includes no evidence that the funds in the IMMA account were used to purchase hundreds of thousands of dollars of inventory. Once the business is operational, the purchase of new inventory from the proceeds derived from the sale of earlier inventory is a normal operating cost that cannot be considered a capital investment by the petitioner. *See generally De Jong v. INS*, No. 6:94 CV 850 (E.D. Tex. Jan. 17, 1997); *Kenkhuis v. INS*, No. 3:01-CV-2224-N (N.D. Tex. Mar. 7, 2003).

Moreover, \$755,300 is far less than the \$3,000,000 in capital projected by the petitioner to counter the director's concern that the business is grossly overcapitalized. The remaining expenses are long-term assets already obtained or ordered. Counsel's assertion that the total assets of Best Food are representative of the petitioner's personal investment, however, is not persuasive. A corporation can obtain funds in ways other than capital investments by a specific shareholder. As stated above, the unaudited financial statements indicate that \$750,446.77 of the assets were financed with long-term debt assumed by the new commercial enterprise in addition to the funds contributed by the as of yet unidentified remaining shareholder(s). The petitioner has not resolved the contradiction between this balance sheet and the business plan. Significantly, as of November 30, 1994, the business retained \$2,409,660.66 in the IMMA account, more than three times the \$755,300 needed for reserve cash and initial inventory.

As such, it appears that the company is grossly overcapitalized. Such funds are not at risk or made available for employment-generating activities. *See Matter of Izummi*, 22 I&N Dec. at 179. Moreover, audited financial statements or complete federal tax returns, including Schedules L and all attached statements, would be far more persuasive evidence of the \$3,000,000 capital allegedly infused into the business. Thus, we concur with the director that the petitioner has not demonstrated an at-risk investment of at least \$1,000,000.

SOURCE OF FUNDS

The regulation at 8 C.F.R. § 204.6(j) states, in pertinent part, that:

- (3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:
 - (i) Foreign business registration records;
 - (ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real,

personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

- (iii) Evidence identifying any other source(s) of capital; or
- (iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. *Matter of Ho*, 22 I&N Dec. at 210-211; *Matter of Izummi*, 22 I&N Dec. at 195. Without documentation of the path of the funds, the petitioner cannot meet his burden of establishing that the funds are his own funds. *Id.* Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972); *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998). An unsupported letter indicating the number and value of shares of capital stock held by the petitioner in a foreign business is also insufficient documentation of source of funds. *Matter of Ho*, 22 I&N Dec. at 211. These "hypertechnical" requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Calif. 2001)(affirming a finding that a petitioner had failed to establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

Initially, the petitioner submitted a May 18, 2004 bank letter from a Citibank in Hong Kong affirming that [REDACTED] have maintained an account at that bank since 1996 with a deposit balance of eight digits. The petitioner also submitted a May 17, 2004 letter from Citibank affirming that the petitioner maintains an IMMA, account [REDACTED] in her own name and that \$1,000,000 was wired into that account on May 3, 2004 from the petitioner's Hong Kong account. As stated above, the petitioner also submitted a May 17, 2004 letter from the Branch Manager of a Citibank branch confirming that Best Food has a business checking account with Citibank and that the petitioner "has transferred \$250,000 from her Citibank Taiwan account to this business account [REDACTED] and [the petitioner] has also transferred \$1,000,000.00 from her Citibank personal account [REDACTED] to this business account [REDACTED]. The letter does not provide any dates for these transfers.

In support of these letters, the petitioner submitted a computer-generated statement for account #1209488590 reflecting an incoming wire for \$999,976 on May 3, 2004. As stated above, the petitioner also submitted a computer-generated statement for account # [REDACTED] reflecting incoming wires of \$149,985 on March 23, 2004 and a deposit of \$100,000 on March 26, 2004. The statement for account [REDACTED] is from February 6, 2004 through May 3, 2004, but does not reflect any withdrawals for \$149,985 or \$100,000. The petitioner did not submit a statement for any account she may have in Taiwan.

In response to the director's request for additional evidence, including evidence regarding how the funds were accumulated, the petitioner submitted Best Food's bank statements for 10 months of 2004. These statements reflect that the wire transfer of \$149,985 was from [REDACTED]. The statements also reflect deposits of \$1,000,000 into account [REDACTED] on May 17, 2004 and a wire transfer into that account for \$1,450,000 from "Hsui En Taiwa" on June 23, 2004.

The director concluded:

The petitioner submitted a letter from Citibank stating that she had over \$1,000,000 in her account. The petitioner has not shown the source of that money or any of the money invested in the enterprise. The petitioner submitted a letter from Citibank stating that "Mr. & Mrs. Pi have maintained a balance of "US Dollar eight figures." The petitioner did not indicate how she is related to [REDACTED]. A review of the business plan submitted states that Hwa-Min Pi is the vice-president of the enterprise. The petitioner has not demonstrated the source of the money in accounts for the petitioner, for [REDACTED] or for the enterprise.

Counsel, for the first time in these proceedings, asserts on appeal that the petitioner received a \$1,000,000 gift from [REDACTED]. In support of that assertion, the petitioner submits an affidavit from [REDACTED] affirming the gift and explaining that he is the father of the petitioner's four children. The family registry submitted confirms this relationship. As evidence of how [REDACTED] obtained these funds, he submits a Share Purchase Agreement whereby Kiriu purchased [REDACTED] 3,290,000 shares in Fusen Gee Manufacturing for NT\$119,516,250.

While it would appear that Citibank may have been referencing the petitioner as [REDACTED] the fact that [REDACTED] fathered the petitioner's children does not necessarily preclude his marriage to someone else. Thus, it is not clear that the account referenced by Citibank exclusively contains funds belonging to the petitioner and Mr. [REDACTED].

On appeal, counsel responds to the lack of transactional evidence of Mr. Pi's gift as follows: "Given that the intent of the source of funds requirement was to ensure the capital invested in a U.S. enterprise was obtained through lawful means, denying the petition due to the inability to obtain documentation of a transaction that occurred 13 years ago would be an unreasonable abuse of discretion." Counsel does not sufficiently explain how the conclusion at the end of this sentence logically follows from the premise at the beginning of the sentence. We will not presume that all funds obtained more than 12 years ago were obtained legally. Regardless, counsel does not explain the weak evidence tracing the funds from the petitioner to Best Food in 2004. Credit advices for Best Food identifying the source of the credit, wire transfer receipts identifying the origin and destination of the wire, and bank statements reflecting withdrawals from the petitioner's accounts matching deposits in Best Food accounts would be far more persuasive than the submitted documents: vague bank letters and Best Food bank statements that fail to identify the petitioner as the source of any wire transfer or deposit.

Finally, beyond the decision of the director,¹ the regulation at 8 C.F.R. § 204.6(g) provides, in pertinent part:

The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien entrepreneur even though there are several owners of the enterprise, including persons who are not seeking classification under section 203(b)(5) of the Act and non-natural persons, both foreign and domestic, provided that the source(s) of all capital invested is identified and all invested capital has been derived by lawful means.

The petitioner has not even identified the other owner(s) of Best Food, let alone demonstrated that the funds contributed by those individuals or entities were lawfully obtained.

¹ An EB-5 application that fails to comply with the specific technical requirements of the law may be denied even if the Service Center does not identify all grounds for denial. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043, (E.D. Calif. 2001).

THE PLAN DOES NOT MEET THE EMPLOYMENT-CREATION REQUIREMENT

The regulation at 8 C.F.R. § 204.6(j)(4)(i) states:

To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:

- (A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
- (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

The regulation at 8 C.F.R. § 204.6(e) states, in pertinent part:

Full-time employment means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week.

Qualifying employee means a United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation. This definition does not include the alien entrepreneur, the alien entrepreneur's spouse, sons, or daughters, or any nonimmigrant alien.

Finally, the regulation at 8 C.F.R. § 204.6(g)(2) relates to multiple investors and states, in pertinent part:

The total number of full-time positions created for qualifying employees shall be allocated solely to those alien entrepreneurs who have used the establishment of the new commercial enterprise as the basis of a petition on Form I-526. No allocation need be made among persons not seeking classification under section 203(b)(5) of the Act or among non-natural persons, either foreign or domestic. The Service shall recognize any reasonable agreement made among the alien entrepreneurs in regard to the identification and allocation of such qualifying positions.

As stated above, the director noted the petitioner's claim, set forth on the original petition signed under penalty of perjury, of a 48.21 percent interest in Best Food and specifically requested the identity of the other investors. In her final decision, the director noted the lack of a response to this question.

On appeal, counsel asserts:

[The director] misstated the Petitioner's percentage ownership of the enterprise. The Petitioner owns fifty-one percent (51%) of the total shares outstanding and is the only