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U.S. Citizenship and Immigration Services

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[redacted]

D7

File: EAC 05 027 53667 Office: VERMONT SERVICE CENTER Date: NOV 27 2006

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner operates and manages fitness centers providing training in the methodologies and practice of Dahnhak and Brain Respiration. It claims to be subsidiary of Dahn World Co., Ltd. located in Seoul, Korea. The petitioner seeks to employ the beneficiary as a Brain Respiration Instructor for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the prospective position in the United States requires an individual with specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director based his decision on an inaccurate or incomplete review of the evidence submitted and did not correctly apply the statute and regulation. Counsel asserts that the petitioner submitted sufficient evidence to establish that the beneficiary has an advanced level of knowledge of the petitioner's techniques and methodologies and therefore qualifies for the visa classification sought. Counsel submits a brief in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii.) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii.) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv.) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

This matter presents two related, but distinct, issues: (1) whether the beneficiary possesses specialized knowledge; and, (2) whether the proposed employment is in a capacity that requires specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

> For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

> [S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The nonimmigrant petition was filed on November 8, 2004. In a letter dated October 27, 2004, the petitioner explained its Brain Respiration methodology and requirements for the position of Brain Respiration Instructor:

> Brain Respiration is an educational method that optimizes the brain's functions through integrated exercises for the body and mind.
>
> The Brain Respiration program combines breathing techniques, brain exercises, and fun developmental activities. . . .
>
> Brain Respiration is a modular program that can be customized to meet any of the particular needs of individuals or classes.
>
> Brain Respiration views the brain in a holistic manner. It recognizes that the brain is not simply an organ, but is the center of the whole human body energy system. BR explores everything from the basic physiological functions of the body to the highest executive functions of the mind. This holistic perspective is incorporated into the BR 5 Steps that begin with awakening and enhancing our five senses to ultimately developing the brain's full potential. . . .

> The Brain Respiration Instructor position requires practical and experiential knowledge in order to teach the methods and theories of Brain Respiration. The Instructor must also have expertise in the administration of the [redacted], the Power Brain device and the Aura Imaging machine. The BR-Q system is the world's first scientific brain innovation system that combines the Brain Respiration program with brain wave synchronizing technology. . . . The Power Brain is a portable brain energizer. . . . The Aura Imaging machine is used to diagnose an individual's energy patterns and blockages.
>
> The position of Brain Respiration Instructor requires a certificate of completion of [the foreign entity's] two-year instructor training program, and certificates of completion of [the foreign entity's] Brain Respiration training programs.

The petitioner noted that the foreign entity employs approximately 900 instructors teaching at more than 360 meditation centers in Korea, and noted "the only school where Dahnhak instructor training certification can be obtained is located in Korea."

The petitioner further provided the following description for the beneficiary's proposed position as a Brain Respiration Instructor:

> [The beneficiary] will perform in a specialized knowledge capacity teaching the techniques of Brain Respiration according to the methods developed by [the foreign entity] The position of Brain Respiration Instructor involves provision, utilization, and application of specialized knowledge of the company's product, services and techniques. [The beneficiary] will be responsible to develop, execute and coordinate training and programs in Brain Respiration. She will discuss and demonstrate the practicality of the Brain Respiration practice with participants and monitor and evaluate each participants progress for admission to the next level of training on an individual basis. . . .[The beneficiary's] presence in the United States is indispensable since she possesses an advanced level of expertise of [the foreign entity's] methodologies and teaching techniques.

In an attached statement, the petitioner provided the following additional information regarding the proposed duties:

> Brain Respiration Instructor in the methodology of meditation and exercise.
>
> 1. Teach the principals and techniques of Brain Respiration
> 2. Prepare Brain Respiration Assignments
> 3. Develop, execute and coordinate training and programs in Brain Respiration
> 4. Discuss and demonstrate the practicality of the Brain Respiration practice with participants
> 5. Monitor and evaluate each participant's progress
> 6. Evaluate individual student progress and determine when techniques have been mastered to allow "graduation" into the next level.

Finally, the petitioner described the beneficiary's employment, training and prior experience:

> [The beneficiary] attended the [redacted] attached to [the foreign entity] from March 2000 to February 2002, and completed the [foreign entity's] courses required to perform in the specialized knowledge position of Dahnhak Instructor. In February 2002, [the beneficiary] received her Instructor Certification from the Korean Dahn Hak Do Association to teach Dahnhak, Taorobics, and Dahn Yoga. In December 2003, [the beneficiary] received additional Dahn Certification as a Brain Respiration Instructor, qualified to teach the Brain Respiration Method, Steps 1, 2, and 3.
>
> [The beneficiary] has worked for [the foreign entity] for two years progressing from an Assistant Dahhak Instructor to a [redacted] r . . . .
>
> [The beneficiary] possesses the required level of unique and specialized knowledge and expertise not readily available in the United States to teach the organization's unique processes and procedures of Brain Respiration.

In support of the petition, the petitioner provided a certificate of employment from the foreign entity; a letter from the [redacted] Association confirming the beneficiary's completion of a two-year training course for [redacted] and identifying the 39 courses completed in connection with the program; a letter from DahnHak Do Association confirming the beneficiary's completion of six courses required for Brain Respiration Instructors for 1st, 2nd and 3rd Stage BR training; and copies of certificate of completion for the above-referenced training courses.

The petitioner also provided an organizational chart and employee list for the U.S. company. Based on the employee list, more than 50 of the company's 92 employees are employed as Brain Respiration Instructors or Senior Brain Respiration Instructors. In addition, the petitioner provided additional information regarding its Dahnhak and Brain Respiration programs, excerpted from the company's web site, and submitted evidence that the company has obtained service marks or trademarks from the United States Patent and Trademark Office for terminology utilized in its programs of instruction.

The director denied the petition on December 8, 2004, concluding that the petitioner had failed to establish that the beneficiary possesses specialized knowledge or that the she would be employed in the United States in a position requiring specialized knowledge. The director summarized the beneficiary's position description noting that the duties of a brain respiration instructor are "typical for that job." The director found that it "does not appear that within a very short period of time any qualified person could not assume the position." The director noted that although the petitioner's organization may utilize procedures, policies and training that are specific to the company, "the same would be true of any business."

The director further determined that the petitioner had failed to support its assertion that the beneficiary "holds an advanced level of expertise of [the foreign entity's] methodologies and teaching techniques," noting that based on the petitioner's representations, she is one of 900 instructors performing similar duties at the foreign entity's 360 meditation centers. The director observed that mere familiarity with an organization's

product or service, such as knowledge of its operational procedures, does not constitute specialized knowledge. The director concluded that the petitioner had not submitted sufficient evidence to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in her field.

The petitioner filed an appeal on January 5, 2005. In her appellate brief, counsel for the petitioner objects to the director's conclusions that the beneficiary's duties as a brain respiration instructor are "typical" or that any qualified person could assume the position "within a very short period of time." Counsel further asserts that "the fact that there are 900 instructors outside the United States does not in any way demonstrate that the knowledge is not 'specialized.'" Counsel emphasizes that each of the foreign entity's instructors has undergone at least two years of "specific, unique training, not currently available in the United States."

Counsel further describes the petitioner's methodologies and the need for the beneficiary's services in the United States:

> Dahnhak and Brain Respiration are comparatively new methodologies for mind/body training in the United States. At this time, they are unfamiliar and not well known but [the petitioner's] Dahnhak fitness centers are an expanding business, with locations in twelve states. Clearly the unfamiliarity and the superficial similarity to yoga or other less demanding and less complex disciplines is not helpful in explaining why Dahnhak and Brain Respiration instructors must have the specialized knowledge required by the [redacted]. Training in Dahnhak and Brain Respiration is demanding, complex, and includes principles of oriental and holistic natural health disciplines, as well as a unique and complex physical interface.
>
> [The petitioner] requires [the beneficiary's] unusual, distinct and advanced knowledge of [the petitioner's] products, techniques, processes and procedures. [The beneficiary] has been selected to work in the U.S. centers because knowledge at the Dahnhak instructor level is not currently available in the U.S. labor market, and that absence hampers the ability of [the petitioner] to conduct business in the United States. . . .
>
> [The beneficiary] has extensive training in the Dahnhak methodologies of movement (similar to yoga) and breathing and breath control, referred to in Dahnhak as "brain respiration." It is not . . . something that could be learned 'within a very short period of time.'

Counsel also objects to the director's observation that all businesses require their employees to be familiar with company policies and procedures and undergo training particular to the company. Counsel emphasizes that the beneficiary's knowledge "is not merely 'particular,' but is unique and proprietary to [the foreign and U.S. entities]." Counsel asserts that the "statutory purpose of the L-1 category is to allow persons with advanced and special knowledge of the petitioning company's policies, procedures, services and products to be transferred to the United States so that essential knowledge will be available to the company in the United States, to enhance its ability to compete successfully." Counsel contends that the beneficiary's level of knowledge "exactly fits that description" and emphasizes that the beneficiary is trained in unique services/products which are "critical to the company's success in the United States."

Counsel refers to a 1994 legacy Immigration and Naturalization Service memorandum from James A. Puleo which provides guidance in the interpretation of specialized knowledge. *See* Memorandum of James A. Puleo, Acting Executive Associate Commissioner, USINS, *Interpretation of Special Knowledge*, CO 214L-P (March 9, 2004)(Puleo memorandum). Counsel notes that the Puleo memorandum requires the beneficiary's knowledge to be different from that generally held within the industry and "uncommon," but not proprietary or unique, as well as "advanced" but not necessarily narrowly held within the company. Counsel states that the Puleo memorandum outlines possible characteristics of employees possessing specialized knowledge, and specifically asserted that the beneficiary: (1) possesses knowledge that is valuable to the employer's competitiveness in the marketplace; (2) possesses knowledge which normally can be gained only through prior experience with the employer; and, (3) possesses knowledge of a product or process which cannot be easily transferred or taught to another individual.

Counsel once again emphasizes that the training required for the offered position is only available through the petitioner's group in Korea, and asserts that the beneficiary, based on her two and one half years of training, has "an advanced level of knowledge of the key component of the petitioner's business, the techniques and methodologies of Dahnhak and Brain Respiration." Counsel concludes by stating that the knowledge required for the position is not available in the United States, it is "advanced" because it requires at least two years of instructor training, and it is "specialized" in that it is "unique and specific to [the petitioner] and available only from the parent company in Korea.

On review, the petitioner has not demonstrated that the beneficiary possesses specialized knowledge or that the prospective position in the United States requires "specialized knowledge" as defined in section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), and the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *See Matter of Colley,* 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin,* 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc,* 13 I&N Dec. 816 (R.C. 1971)). [1]

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[1] Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, the cited cases, as well as *Matter of Penner,* remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

> A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business' operation.

Id. at 53. The evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable her to provide a service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

In *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). Although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner*, *supra* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., *Immigration Act of 1970: Hearings on H.R. 445*, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. at 119. According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; *see also*, *1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to "key personnel" and "executives.")

Thus, based on the intent of Congress in its creation of the L-1B visa category, as discussed in *Matter of Penner*, even showing that a beneficiary possesses specialized knowledge does not necessarily establish

eligibility for the L-1B intracompany transferee classification. The petitioner should also submit evidence to show that the beneficiary is being transferred to the United States as a crucial employee. As determined by the director, and as discussed below, the beneficiary's job description does not distinguish her knowledge as more advanced or distinct among brain respiration instructors employed by the foreign or U.S. entities or by other unrelated companies who have developed similar meditation and exercise programs based on similar principles. The statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . .idea which cannot have a plain meaning." 745 F.Supp. 9, 15 (D.D.C. 1990).

The Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally*, H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the Congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

Although the Immigration Act of 1990 provided a statutory definition of the term "specialized knowledge," Congress did not give any indication that it intended to expand the field of aliens that qualify as possessing specialized knowledge. Although the statute omitted the term "proprietary knowledge" that was contained in the regulations, the statutory definition still calls for "special knowledge" or an "advanced level of knowledge," similar to the original regulation. Neither the 1990 House Report nor the amendments to the statute indicate that Congress intended to expand the visa category beyond the "key personnel" that were originally mentioned in the 1970 House Report. Considered in light of the original 1970 statute and the 1990 amendments, it is clear that Congress intended for the class of nonimmigrant L-1 aliens to be narrowly drawn and carefully regulated, and to this end provided a specific statutory definition of the term "specialized knowledge" through the Immigration Act of 1990.

On appeal, counsel relies on the 1994 Puleo memorandum, asserting that it represents current CIS policy of specialized knowledge criteria. It must be noted that in making a determination as to whether the knowledge possessed by a beneficiary is special or advanced, the AAO relies on the statute and regulations, legislative history and prior precedent. Although counsel suggests that CIS is bound to base its decision on the above-referenced memorandum, the memorandum was issued as guidance to assist CIS employees in interpreting a term that is not clearly defined in the statute, not as a replacement for the statute or the original intentions of Congress in creating the specialized knowledge classification, or to overturn prior precedent decisions that continue to prove instructive in adjudicating L-1B visa petitions. The AAO will weigh guidance outlined in the policy memorandum accordingly, but not to the exclusion of the statutory and regulatory definitions, legislative history or prior precedents.

Furthermore, the Puleo memorandum allows CIS to compare the beneficiary's knowledge to the general United States labor market and the petitioner's workforce in order to distinguish between specialized and general knowledge. The Acting Associate Commissioner notes in the memorandum that "officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized." Puleo memo, *supra*. A comparison of the beneficiary's knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary's skills and knowledge and to ascertain whether the beneficiary's knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary's knowledge, CIS would not be able to ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized. *Id.* The analysis for specialized knowledge therefore requires a test for the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary's job duties.

In this matter, the petitioner has provided only general descriptions of the beneficiary's current and proposed roles as a Brain Respiration Instructor that convey little understanding of the type or extent of specialized knowledge that would be required to successfully perform the purported job duties. The job descriptions and supporting evidence provided do not establish that the beneficiary has acquired specialized knowledge of the organization's product, service, research, equipment, techniques or other interests, that she possesses an advanced knowledge or expertise in the company's processes and procedures, or that she would apply "specialized" or "advanced knowledge" in order to perform the duties of the position offered in the United States. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner indicates that the beneficiary has been and would be providing instruction in principles and techniques of Brain Respiration, preparing assignments, developing and coordinating training and programs, discussing and demonstrating the practicality of Brain Respiration with participants, monitoring and evaluating participants' progress, and evaluating individual students. These duties are general and could describe any instructor in virtually any type of "mind-body" fitness training program.

Accordingly, the petitioner must differentiate the knowledge required to instruct students in its "Brain Respiration" techniques as different or uncommon from that generally found in the petitioner's industry in order to establish that the beneficiary's knowledge is "specialized." As noted in the Puleo memorandum, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor.

Counsel attempts to differentiate the beneficiary's knowledge by asserting that "training in Dahnhak and Brain Respiration is demanding, complex, and includes principles of oriental and holistic natural health disciplines, as well as a unique and complex physical interface." Counsel further states that "the unfamiliarity and the superficial similarity to yoga or other less demanding and less complex disciplines is not helpful in explaining why Dahnhak and Brain Respiration instructors must have the specialized knowledge required by [the petitioner.]" The unsupported statements of counsel on appeal or in a motion are not evidence and thus

are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The petitioner cannot satisfy its burden of proof by merely stating that the company's practices are "complex" and claiming that no "useful" comparison can be made to other disciplines which would appear to be related. As noted above, CIS must make comparisons in order to determine whether the beneficiary's claimed knowledge is different from that commonly found in the industry. Notwithstanding counsel's assertion that the petitioner's programs cannot be compared to yoga, the AAO notes evidence in the record that indicates that the petitioner is doing business in the United States as [redacted]

Further, a review of the beneficiary's transcript from the DahnHak Do Association, described as an "attached association" of the foreign entity, indicates that her coursework included general training in oriental philosophy and herbs, reflexology, anatomy and physiology, Yoga, chiropractics, acupuncture, Taekwondo and other martial arts, medical science, meditation, exercise, pathology, psychology and other areas that cannot be considered uncommon in her field. The beneficiary's specific training in Brain Respiration consisted of only six courses completed while she was employed full-time as a DahnHak instructor. The actual number of hours of training required to complete the Brain Respiration coursework has not been provided. By itself, work experience and knowledge of a firm's technically complex products or methodologies will not equal "special knowledge." *See Matter of Penner*, 18 I&N Dec. at 53.

The petitioner's failure to attempt to distinguish its methods and techniques from those offered by other employers providing similar services undermines its claim that the knowledge possessed by the beneficiary and required for the U.S. position is truly specialized. 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)).

The AAO recognizes that the petitioner has registered service marks with the United States Patent and Trademark Office for the terms "Brain Respiration" and "Dahnhak,", but this evidence alone does not establish that these practices are significantly different from comparable techniques used by other employers in the petitioner's industry. For example, the "Brain Respiration" service mark was registered as "educational and instructional services, namely, a program to enhance mental, emotional and physical capabilities through visualization, mediation, relaxation and exercise." "Dahnhak" (translated as "energy learning") was registered for "educational services, namely conducting seminars and classes in the field of holistic health." The fact that the petitioner has registered names for the services it provides, without additional evidence, does not support the petitioner's claim that familiarity with the petitioner's methods and services alone constitutes specialized knowledge.

On appeal, counsel specifically objects to the director's observation that the beneficiary's knowledge could not be considered advanced, in light of the petitioner's representation that she is one of 900 instructors performing similar duties for the foreign entity. Counsel asserts that the fact that the petitioner's group employs 900 instructors outside the United States does not in any way demonstrate that the knowledge is not 'specialized.'" Counsel emphasizes that each of the foreign entity's instructors has undergone at least two years of "specific, unique training, not currently available in the United States." Counsel further contends that

the knowledge must be considered "advanced" because the instructing training requires two years to complete.

Again, counsel's assertions are not persuasive. If all 900 similarly employed workers within the foreign organization received the same training in the petitioner's techniques and methodologies, then mere possession of knowledge of these processes and methodologies does not rise to the level of specialized knowledge. Although counsel correctly observes that knowledge need not be narrowly held within an organization in order to be specialized knowledge, the L-1B visa category was not created in order to allow the transfer of all employees with any degree of knowledge of a company's processes. If all employees are deemed to possess "special" or "advanced" knowledge, then that knowledge would necessarily be ordinary and commonplace. Based on counsel's arguments, anyone who has completed the same training programs as the beneficiary would possess "special knowledge" or an "advanced level of knowledge." Counsel's expansive interpretation of the specialized knowledge provision is untenable, as it would allow virtually any skilled or experienced employee to enter the United States as a specialized knowledge worker.

Further, the petitioner has submitted no evidence in support of its claim that the beneficiary possesses "advanced" knowledge of the company's processes and procedures, such that it can be set apart from the knowledge possessed by others who have completed the same training courses. The petitioner did not distinguish the beneficiary's knowledge, work experience, or training from those of the other employees within the organization. The beneficiary had worked as a Brain Respiration Instructor for only four months prior to her admission to the United States as a visitor in May 2004, and based on the evidence submitted, is certified to teach only the first three steps of the five-step "Brain Respiration Method." Based on the petitioner's statements and the evidence presented, it impossible to classify the beneficiary's knowledge of the petitioner's techniques and methods as advanced. The AAO cannot conclude that the beneficiary's role is "of crucial importance" to the organization or that she qualifies as "key personnel" within the petitioner's family of companies based on her training and previous assignments. *See Matter of Penner*, 18 I&N Dec. at 53. It may be correct to say that the beneficiary is a highly skilled employee, but this is not enough to bring the beneficiary to the level of "key personnel."

Finally, the AAO notes that the record does not persuasively establish that the position offered in the United States actually requires two and one half years of specialized training in Korea as claimed by the petitioner. As noted above, the petitioner submitted an employee list for the U.S. company dated August 2004, and 51 out of the company's 92 employees are identified as holding the position of Senior Brain Respiration Instructor and Brain Respiration Instructor, with duties defined as "teach the principals and techniques of BR." It is implausible that all of these employees were trained by the [redacted]n in Korea prior to joining the United States company. According to the career section of the petitioner's web site (http://www.dahncenter.com), the petitioner hires full-time instructors regardless of their "previous education, career or professional experience" and provides a three-month introductory training period to all new employees. As the petitioner has not identified any distinction between the duties to be performed by the beneficiary, and the duties performed by the U.S. company's existing brain respiration instructors, it is reasonable to conclude that the beneficiary's training with the foreign entity, while valuable to the petitioner, is not a prerequisite for the position she has been offered.

Finally, the AAO will address counsel's claim that the beneficiary qualifies for classification as a specialized knowledge employee pursuant to characteristics outlined in the 1994 Puleo memo, specifically, that she: possesses knowledge that is valuable to the employer's competitiveness in the marketplace; possesses knowledge which normally can be gained only through prior experience with the employer; and, possesses knowledge of a product or process which cannot be easily transferred or taught to another individual. While these factors may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's processes and procedures, or a "special knowledge" of the petitioner's product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As discussed above, the petitioner has not established that the beneficiary's knowledge rises to the level of specialized knowledge contemplated by the regulations.

Based on the above discussion, the petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's methodologies and techniques is more advanced than the knowledge possessed by others employed by the petitioner, or that knowledge of these methodologies and techniques alone constitutes specialized knowledge. The AAO does not dispute the fact that the beneficiary's knowledge has allowed her to successfully perform her job duties for the foreign entity. However, the successful completion of one's job duties does not distinguish the beneficiary as "key personnel," nor does it establish employment in a specialized knowledge capacity. As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the beneficiary's field of endeavor, or that her knowledge is advanced compared to the knowledge held by other similarly employed workers within the petitioner and the foreign entity.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra* at 16. The record does not establish that the beneficiary has specialized knowledge or that the position offered with the United States entity requires specialized knowledge.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.