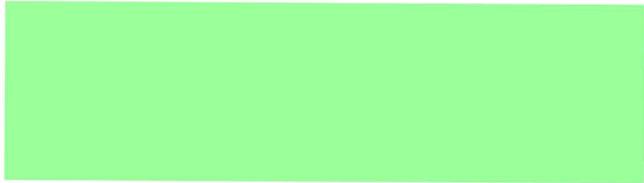




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **APR 21 2014** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:   
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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee 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, a California limited liability company, states that it is an affiliate of [REDACTED] located in Russia. The foreign employer is engaged in the martial arts business and states that it owns and operates a kung fu dojo in Moscow. The petitioner seeks to employ the beneficiary as a “kung fu/[REDACTED] program instructor” in a new office in the United States for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish that: (1) the beneficiary’s employment abroad was in a position involving specialized knowledge, (2) that the beneficiary possesses specialized knowledge, and (3) that the beneficiary’s proposed position in the U.S. would be in a specialized knowledge capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the beneficiary holds specialized knowledge of the company’s proprietary information. Further, counsel states that his role with the foreign employer rises above that of an average employee and that his proposed position within the petitioner is of crucial importance to the new venture in the United States. The petitioner submits additional evidence on appeal in an effort to establish that the beneficiary will be employed in a specialized knowledge capacity.

### I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a parent, subsidiary, or affiliate of the foreign employer.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves “specialized knowledge,” the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

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

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 regulation at 8 C.F.R. § 214.2(l)(3) 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.

## II. The Issue on Appeal

The sole issue to be addressed is whether the petitioner established that the beneficiary possesses specialized knowledge and whether he has been employed abroad, and would be employed in the United States, in a position requiring specialized knowledge.

### A. Facts

The petitioner states that the foreign entity has operated one of the most prominent kung fu schools in Russia since 2001. The petitioner asserts that it has approximately 350 students in Russia. The petitioner states that the foreign employer was established by [REDACTED] the beneficiary's father, a recognized kung fu master who trained with a Chinese master during the 1980s. The petitioner further indicated that the foreign entity is not a typical martial arts studio, but that it practices the traditional art of kung fu featuring professional level training not only on the physical level, but at psychological, medical and philosophical levels. The petitioner asserts that the foreign entity provides a comprehensive and unique level of martial arts training and knowledge based upon its instructors' completion of a uniquely rigorous training program.

In a support letter submitted with the petition, the foreign entity stated that the beneficiary has been a pupil of his father for the last eleven years and that he had completed the fundamentals of his kung fu training by 2006, at which time he began working as an assistant instructor for the foreign entity. The petitioner indicated that the beneficiary became a full instructor in 2008 specializing in “external style” and the instruction of children. The petitioner described the beneficiary’s duties as follows:

[The beneficiary] heads up the children’s section, training the approximately 90 children students we have in the school. The children break down into three age groups: 4-6, 7-9, 10-14. He underwent specialized children-focused training from [redacted] enabling him to work with children. He also trains an adult group. On Saturdays, he organizes tea ceremonies for adults (at least once a month), at which he also lectures, and arranges a cultural program for children one-two times a month. He is responsible for choreographing special events, such as Chinese New Year and holiday events. He has also served as a co-instructor at three seminars held in China in which students from [the foreign entity] traveled from Moscow to participate in educational events.

The petitioner further explained that the beneficiary spends 70% of his time training and teaching others, 10% on marketing and other administrative duties (such as preparing website articles), and 20% on personal training..

The petitioner stated that Mr. [redacted] standard training program for kung fu instructors “encompasses 6 hours a day, 6 days a week” and that it can last for 8 years. The petitioner explained that this training is necessary to become a full-fledged instructor with the foreign entity. The petitioner submitted the foreign entity’s organizational chart indicating that it has five additional instructors, including [redacted] who is described as having similar experience and skills as the beneficiary. The petitioner noted that Mr. [redacted] came to the foreign entity as Mr. [redacted]’s first student in 2001 and that he had completed Mr. [redacted]’s “six hour a day and six hour a week” training by 2006, thereafter becoming a senior instructor with the foreign entity. The foreign entity’s other instructors included [redacted] and [redacted]. The petitioner stated that [redacted] and Ms. [redacted] had completed 4 ½ and 5 years of training respectively, or “less than the 8 usually required.” The petitioner also indicated that Mr. [redacted] and Mr. [redacted] had completed the eight years of training, but “have not been trained to work with children” like the beneficiary. The petitioner explained that the beneficiary’s experience in training children is required for the U.S. operation.

The petitioner is an affiliate of the foreign employer formed in California in January 2012 in order to expand the foreign entity’s martial arts training services to the United States. The petitioner states that the beneficiary will act as a kung fu instructor specializing in instructing children and “external activity” at a new martial arts center in Los Angeles. The record reflects that the petitioner has already begun operations through the acquisition of sufficient retail space and the signing of contracts with various clients to provide martial arts training.

The petitioner further explained that the center of its business model in the United States will be launching sales of the [redacted] program, a fourteen disc home fitness program developed by Mr. [redacted]

based on his martial arts training. The petitioner asserted that "a key component of the [U.S. business] plan is the [redacted] program, the brainchild for which [Mr. [redacted]] is seeking representatives such as [redacted]. In a submitted business plan, the petitioner projected that once the [redacted] was produced, with the beneficiary's assistance, it is expected to sell 250,000 copies in the first year and expand across the United States through television advertising. The petitioner also stated in its business plan that the creation and development of the [redacted] would follow the establishment of its martial arts studio and that it would require six million dollars in investment. The petitioner described the beneficiary's knowledge of the [redacted] Program as follows:

[The beneficiary's] role as consultant for the [redacted] Program is indispensable. He played a vital role in the creation of his father's program. He made important suggestions, particularly in the philosophical discourse present in the program. He will be integral to the actual shooting of the [redacted] videos. Having been specially trained by his father over all of these years; having assisted in the production of the martial arts CDs and gaining extensive exposure to the video production process; and having the technical and physical capabilities, he will demonstrate numerous aspects of the [redacted] program. As production and sales of the program ramp up, he will be one of the faces of the product, consulting customers who will have questions on the product's proper usage.

The petitioner indicated that the beneficiary would spend 40% of his time on in-studio instruction, including individual instruction, lectures, and leading children's groups, 40% on [redacted] Program Consulting, and 20% on personal training. Lastly, the petitioner submitted evidence asserting that the beneficiary completed the U.S. equivalent of a Master's Degree in Physical Education at the [redacted] in June 2011.

The director found the initial evidence submitted by the petitioner insufficient to establish that the beneficiary has specialized knowledge or that he was employed abroad in a capacity involving specialized knowledge. Consequently, the director issued a request for additional evidence (RFE) listing evidence the petitioner could submit to establish that the beneficiary works in a specialized knowledge capacity abroad, including: (1) a more detailed description of the beneficiary's duties abroad including the percentage of time required to perform his duties and an explanation and evidence showing how the knowledge involved in the position is different from others employed by the foreign company or in similar positions in the industry; and (2) a copy of the foreign employer's organizational chart.

The director also requested that the petitioner submit additional evidence to establish that the beneficiary holds specialized knowledge, including: (1) a detailed explanation of the specialized knowledge obtained by the beneficiary through education, training, and employment, including the minimum amount of time required to obtain the knowledge and an indication of whether the knowledge is held by others employed in the organization; (2) the total number of employees abroad and in the U.S. that acquired the same knowledge of the company's processes and procedures as the beneficiary and how this knowledge is set apart from employees working in a similar position within the organization and other employers in the same type of business; (3) documentation showing specialized knowledge gained through specific training courses presented by the company and how the training establishes the beneficiary's knowledge as special and

advanced when compared to other employees in the industry; and (4) additional explanation and evidence related to any proprietary knowledge the beneficiary may hold.

The director further stated that the petitioner's description of the beneficiary's U.S. duties was insufficient to demonstrate that the position will require specialized knowledge. The director suggested that the petitioner provide: (1) a more detailed description of the beneficiary's proposed duties, including the minimum amount of time required to perform the duties of the position, and an explanation of how the beneficiary's duties are different from those of other workers employed by the petitioner or other U.S. employers in this type of position; and (2) any training the beneficiary will provide in the area of his claimed specialized knowledge including a detailed description of the training to be provided.

In response, the petitioner provided a listing of approximately 15 professionally produced videos featuring the beneficiary. Also, the petitioner submitted photographs of the beneficiary conducting training and participating in cultural activities such as plays and demonstrations, including those in China and Greece. The petitioner further provided an updated organizational chart for the foreign employer listing the beneficiary in the position of lead children's instructor overseeing two subordinate children's instructors. The petitioner submitted affidavits from the foreign entity's president, Mr. [REDACTED] including a chart offering a comparison of the beneficiary's knowledge to that possessed by the foreign employer's five other instructors and other martial arts instructors in Russia. Mr. [REDACTED] noted that the beneficiary had mastered 14 of 17 specific martial arts criteria, and indicated that the other instructors had mastered the following number of criteria by comparison: Mr. [REDACTED] 15, Mr. [REDACTED] 12, Mr. [REDACTED] 10, Ms. [REDACTED] 6, and Ms. [REDACTED] 6. He further explained that the beneficiary's skills are unique due to his experience working with children and that he personally provided unique training to the beneficiary in instructing children. Mr. [REDACTED] further stated that the instruction of children comprises approximately 40% of the foreign entity's total business. He noted that amongst the instructors with experience working with children, the beneficiary was the most senior with over 5 years of experience instructing children, and that he was set apart from the others training children due to his 20 years of unique training. By comparison, Mr. [REDACTED] noted that the other child instructors had only been trained by Mr. [REDACTED] for less than two years.

Additionally, the petitioner stated that the beneficiary holds proprietary knowledge of the company's [REDACTED] program, the proposed set of home fitness instruction videos the company intends to market in the United States. The petitioner stated that the only people with intimate knowledge of the [REDACTED] program are [REDACTED] General Director, [REDACTED] - Senior Instructor, and the beneficiary. The petitioner also provided a letter from a Master [REDACTED] with whom the foreign employer has conducted international martial arts seminars. Mr. [REDACTED] attests to [REDACTED]; mastery of kung fu and emphasizes that the beneficiary, and his colleague Mr. [REDACTED] have reached an elite level of martial arts and that they have completed a special course of training very different from common methods of martial arts training. Mr. [REDACTED] further notes that the foreign employer's method of training was devised exclusively by [REDACTED] through his unique training with a Chinese master and that Mr. [REDACTED] has further developed unique training and subtleties over time. Mr. [REDACTED] notes that he has now passed this knowledge along to both the beneficiary and Mr. [REDACTED]. Finally, Mr. [REDACTED] emphasized that the training was "based on ancient traditional techniques of Chinese Kung Fu training."

Relevant to the U.S. employment, the petitioner also provided a detailed comparative chart of seven prospective hires considered by the petitioner for the instructor position, including their resumes, and specific reasons why each candidate was rejected. The petitioner submitted a chart comparing these U.S. candidates in 17 specific categories relevant to the style of kung fu practiced by the beneficiary. The petitioner also emphasized the beneficiary's knowledge of the proprietary [REDACTED] program and his contribution in creating three of the instructional videos.

As noted, the director denied the petition based on a finding that the petitioner had not established that the beneficiary possesses specialized knowledge or that he was employed abroad, or would be employed in the United States, in a position requiring specialized knowledge. The director reasoned that she could not conclude, based on the evidence submitted, that the beneficiary possesses knowledge significantly different from that held by other similarly employed martial artists. The director further noted that stating that the beneficiary possesses knowledge proprietary to the petitioner was not alone sufficient to establish that the beneficiary's knowledge is special or advanced.

On appeal, counsel asserts that the beneficiary's knowledge surpasses the usual and is complex, noteworthy and uncommon. Counsel points to the beneficiary's completion of a unique eight-year training program devised by Mr. [REDACTED] which only two instructors have ever completed. Counsel further notes the beneficiary's training occurred over a period of "twenty years" since childhood by his father, a kung fu master. Counsel states that the beneficiary's knowledge is not readily transferable and could not be rapidly acquired by others without significant in-house expense and that he is a key employee responsible for 40% of the foreign entity's operations devoted to providing martial arts training to children.

The petitioner also submits additional evidence on appeal, including affidavits from Mr. [REDACTED] explaining in detail the uniqueness of his training programs and a chart comparing the foreign entity's training with other forms of martial arts commonly practiced in Russia. Mr. [REDACTED] explains that typical modern martial arts training is much more basic than the training practiced in his school. He notes that typical martial arts training is conducted only part time about 2-3 times a week, making it impossible for an instructor to reach the status of a professional. He notes that these schools typically hire contractors to perform fitness-style training sessions inconsistent with the professional standards of the foreign entity. Further, Mr. [REDACTED] provides a breakdown of the physical and classroom training completed by the beneficiary during the aforementioned 8 year program. Counsel also submits five job postings for martial arts instructors in an attempt to differentiate the beneficiary's level of experience.

Additionally, counsel has submitted a second brief explaining that Mr. [REDACTED] had recently been inducted into the [REDACTED] emphasizing that the beneficiary "learned at the knee of his father." The petitioner also submitted a letter of recommendation from [REDACTED] a "[REDACTED] Karate Champion," holder of "[REDACTED] belts," and former actor in "dozens of martial arts films." Ms. [REDACTED] explained that she became acquainted with Mr. [REDACTED] earlier in 2013 and that she had witnessed a demonstration by the beneficiary. Ms. [REDACTED] stated that she was impressed by the beneficiary's physical condition and stated that "his knowledge of traditional kung fu is extraordinarily uncommon; it is very hard to find someone in the United States with such knowledge." Further, counsel provided a support letter from actor [REDACTED] attesting to the impressive nature of the beneficiary's skills.

B. Analysis

Following a review of the petitioner's assertions and the evidence submitted, the petitioner has not established that the beneficiary possesses specialized knowledge or that he will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

In order to establish eligibility, the petitioner must show that the individual's prior year of employment abroad was in a position involving specialized knowledge. 8 C.F.R. § 214.2(l)(3)(iii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is advanced or special, and that the beneficiary's position requires such knowledge.

Here, the petitioner states that the beneficiary's specialized knowledge is based upon his father's unique training in kung fu received from an early age by Chinese kung fu master [REDACTED] and that he passed this knowledge along to his son, the beneficiary. However, the petitioner has not specifically described how this training differs materially from other training in traditional kung fu. The petitioner submits a support letter from [REDACTED] indicating that the beneficiary "is truly an excellent master of traditional kung fu" and that

the beneficiary has completed “a special course of training quite different from common modern methods of training in martial arts.” However, the petitioner has not appropriately explained or documented Mr. [REDACTED] qualifications to give this support letter sufficient probative value. Further, the support letter fails to demonstrate that the beneficiary’s training is different or uncommon in the field of traditional Chinese kung fu, or that this type of traditional Chinese kung fu is specific to the petitioner or foreign entity. The L-1B classification is focused on the beneficiary’s knowledge specific to their company or employer, rather than his or her knowledge of cultural or traditional teachings, which must be considered general knowledge in the field.<sup>1</sup>

This office reasonably presumes most teachers of martial arts have developed personalized methods of training or variations in conveying traditional techniques which they might pass along to their students. However, the record does not establish how such variations in teaching traditional kung fu are sufficient to establish Mr. [REDACTED] teachings as specialized knowledge within the field of traditional Chinese martial arts. The petitioner has not explained how this knowledge is different from other traditional training in kung fu. Indeed, the recommendation provided by Mr. [REDACTED] states that Mr. [REDACTED] training, and in turn the beneficiary’s training, “is based on the ancient traditional techniques of Chinese Kung Fu training.” The record also discussed international exhibitions attended by the beneficiary and his father, where many others are shown practicing similar forms of traditional kung fu. The support letter, and the record generally, do not specifically indicate how the Mr. [REDACTED] or the beneficiary’s training is different or uncommon when compared to these similarly placed colleagues in the industry.

Likewise, the petitioner has not established that the beneficiary’s knowledge is special or advanced when compared to that possessed by his colleagues. As noted above, determining whether a beneficiary’s knowledge is “special” or “advanced” inherently requires a comparison of the beneficiary’s knowledge against that of others in the petitioning company. Here, the foreign entity states that it employs five kung fu instructors other than the beneficiary, three which are asserted to have completed the eight years of training stated as necessary to reach senior instructor status, including Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED]. As such, four of the foreign entity’s six total instructors are shown to have similar levels of senior level training as that of the beneficiary. The petitioner contends that the beneficiary is set apart from these other experienced kung fu practitioners based upon his experience in training children and based upon his receipt of personal training from his father, Mr. [REDACTED].

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<sup>1</sup> See (1) 8 C.F.R. § 214.2(l)(i)(ii)(D) defining specialized knowledge as “special knowledge possessed by an individual of the petitioning organization’s product, service, research, equipment, techniques, management, or other interests. . . .”; (2) Section 214(c)(2)(B) of the Act, providing that “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*.” (Emphasis added).

However, the petitioner has failed to sufficiently articulate and corroborate with supporting evidence that Mr. [REDACTED] training is different or uncommon when compared to other training in traditional kung fu. Likewise, the petitioner has not explained how the foreign entity's training methods for children are materially different from other forms of martial arts training provided to children or established that training children requires skills not generally possessed by similarly qualified and experienced kung fu instructors. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Indeed, a marketing flyer submitted on the record indicates that the children's school includes instruction in "basic breathing methods," "basic warm-up of joints, gymnastics, and acrobatics," and "primary elements of the basic technique of traditional kung fu." Therefore, the record supports a conclusion that training provided to children is of a much less advanced degree than that provided to adults, or to those with higher-level martial arts experience. As such, the record does not establish that the beneficiary's knowledge in training children, that which is stated to set him apart from his colleagues, qualifies as either specialized or advanced compared to that possessed by his associates within the same school.

Further, there are inconsistencies in the record with respect to the beneficiary's training and experience. As noted, the petitioner states that the beneficiary completed an eight year training program specially developed by his father requiring "six hours of training, six days a week." On appeal, counsel indicates that the petitioner has been receiving training from his father since early childhood, or for over twenty years. But, the record elsewhere states that the beneficiary did not begin training with his father until 2001. Further, an additional support letter submitted on appeal from actor [REDACTED] states that the beneficiary began training with his father twelve years ago, or around 2001. Additionally, the beneficiary's biography on the petitioner's public website, referenced on the record, states that the beneficiary began his kung fu training in "general groups" at the age of sixteen, and that merely five years later he received "a certain degree of accomplishment" and became an instructor, further suggesting that he did not begin his training until an older age.<sup>2</sup> In sum, the aforementioned discrepancies leave question as to whether the beneficiary has received a level of training that is different or uncommon compared to other qualified kung fu instructors. 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). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Moreover, the petitioner has not demonstrated that the beneficiary's knowledge of its [REDACTED] fitness program qualifies as specialized knowledge. As noted previously, the petitioner states that the beneficiary qualifies as having specialized knowledge through his knowledge of the petitioner's proposed [REDACTED] home fitness program. The petitioner maintains that only Mr. [REDACTED] Mr. [REDACTED] and the beneficiary

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<sup>2</sup>See Website of [REDACTED] - Instructors, available at [http://\[REDACTED\]](http://[REDACTED]) (accessed on April 15, 2014).

have knowledge of the program, as they are the only members of the foreign entity to have contributed to its development. Specifically, the petitioner indicates that the beneficiary has personally contributed to developing three of the thirteen discs making up the [REDACTED] home fitness video program. Counsel contends that since knowledge of the [REDACTED] is proprietary and closely held by only three members of the company, it is thereby specialized.

Although demonstrating that knowledge is proprietary can be probative as to its specialized nature, the fact that knowledge is proprietary or closely held is not by itself sufficient to demonstrate that it qualifies as specialized knowledge; the petitioner must still establish that the knowledge is special or advanced. Again, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge to that of others in the petitioning company and/or to that possessed by others holding comparable positions in the industry. In the present matter, the petitioner indicates that three of its six instructors have knowledge of the [REDACTED] program. The petitioner has not provided sufficient specifics or supporting documentation to demonstrate how the proposed fitness videos will be different or uncommon in the home fitness market as necessary to demonstrate that this knowledge is of sufficient complexity to be considered specialized. Indeed, many home fitness videos incorporate martial arts techniques, including P90X, the successful home fitness program referenced many times by the petitioner as a competitor in the home fitness video market.

The petitioner has not shown that the techniques to be employed in the [REDACTED] are special or advanced when compared to others used in similar fitness videos incorporating martial arts techniques. In fact, the petitioner's business plan indicates that shooting of the [REDACTED] videos will take place after the beneficiary enters the United States on the currently requested visa and when the petitioner secures an initial investment of \$6 million from "Russian and/or American investors." The business plan also states that it will recruit "famous actors" such as [REDACTED] and [REDACTED] to appear in the proposed videos. Therefore, the petitioner suggests on the record that the techniques used in the [REDACTED] could be performed by a practitioner of kung fu with less training than that claimed for the beneficiary, including others not personally trained by Mr. [REDACTED] or even trained in traditional kung fu. Further, the petitioner has not demonstrated why the techniques to be performed in the proposed [REDACTED] Program can only be performed by the beneficiary and not any person trained in traditional kung fu. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

This office acknowledges the petitioner's claim that the beneficiary's knowledge is specialized compared to other kung fu instructors employed outside of the petitioner's organization, particularly those within the U.S. marketplace. While the L-1B classification requires no test of the labor market in the United States, the petitioner has offered job postings as evidence to establish that the beneficiary's knowledge is specialized when compared to that possessed by other martial artists in the United States. In response to the director's RFE, the petitioner submitted evidence comparing the beneficiary's knowledge to that of seven martial artists it claims to have recruited for the role of instructor. On appeal, counsel also submits general job postings for martial arts instructors in the United States. The petitioner states that this evidence demonstrates the lower requirements and qualifications of martial arts instructors in the United States, and therefore, that the

beneficiary's advanced knowledge is required to effectuate the petitioner's standards of training in the United States. This office does not find this comparison persuasive as the record indicates that the aforementioned martial artists were interviewed for an entry level instructor position, not the senior level instructor role offered to the beneficiary. The petitioner has not offered evidence comparing the beneficiary's knowledge to that of other similarly-trained and experienced kung fu instructors. Indeed, the record reveals little about whether the teaching of traditional kung fu in the United States is uncommon, beyond referencing a random subset of martial arts instructors and other entry level martial arts instructor positions from across the country. In sum, due to the lack of evidence or specifics regarding the field of traditional kung fu in the United States, the petitioner has not demonstrated that the beneficiary's knowledge is different or uncommon among kung fu instructors.

Lastly, in the most recently submitted brief, the petitioner requests oral argument, suggesting that a demonstration by the beneficiary would be probative in establishing the beneficiary's specialized knowledge. The regulations provide that the affected party must explain in writing why oral argument is necessary. 8 C.F.R. § 103.3(b)(1). USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b)(2). In this instance, counsel identified no unique factors or issues of law to be resolved. The written record of proceedings fully represents the facts and issues in this matter. We have no doubt that the beneficiary is a skilled martial artist, a qualified traditional kung fu instructor, and an asset to his employer; the beneficiary's skills are not at issue. Consequently, the request for oral argument is denied.

For the reasons discussed above, the evidence submitted fails to establish that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner in the United States. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

### III. Conclusion

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.