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U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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U.S. Citizenship  
and Immigration  
Services

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Date: **MAR 06 2012**

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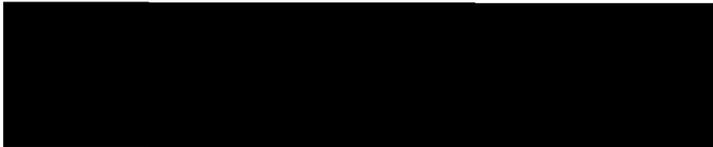
FILE: 

IN RE: Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Perry Rhew*  
Perry Rhew  
Chief, Administrative Appeals Office

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

On the Form I-129 visa petition the petitioner stated that it is a software development and consulting firm. To employ the beneficiary from October 1, 2009 to September 28, 2012 in what it designates as a Software Developer J2EE position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that counsel failed to establish that the petitioner would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States."

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

With the petition, counsel submitted a letter, dated March 28, 2009, from the petitioner's president. As to the duties of the proffered position, the petitioner's president stated:

The position of a Software Developer-J2EE [with the petitioner] developing Structured Finance Software applications requires a candidate with a strong background in Java Server side programming. The candidate should have extensive programming experience and detailed working knowledge of J2EE, C++ & JAX web service technologies. He also should have experience working with Enterprise Java Beans, tomcat & apache Ant.

The candidate should also have excellent knowledge of advanced mathematics & engineering concepts and also possess strong analytical skills. He should be able to work with personnel in the business functional areas to research and identify the best technical solution that would support the most efficient business processes. He will also be responsible for new application implementations, product enhancements and application integrations.

In addition, he will also test completed solution implementations for functional effectiveness and performance. The job duties also include post implementation technical support to [REDACTED] clients including system troubleshooting, resolution of technical and operational problems and making recommendations on software updates.

On June 23, 2009 the service center issued an RFE in this matter. The service center requested evidence that the petitioner would employ the beneficiary in a specialty occupation.

The service center also requested evidence pertinent to the particular project the beneficiary would work on, the location at which he would work, the name of the end-client for whom he would work and whether he would be provided to the end-client through an intermediary company.

The service center requested that if, on the other hand, the beneficiary would work on the petitioner's own in-house project, the petitioner submit evidence describing the project, the length of time the beneficiary is expected to work on it, the names of team members assigned to the project, and their titles and duties.

In response, counsel submitted evidence pertinent to a software application called "'Credit Scoring Module Analytics Engine' (CSMA Engine)" and a letter, dated July 31, 2009, from the petitioner's president.

The information pertinent to CSMA Engine shows that it is a program under development that would analyze loan risk, using both factors related to the borrower and macroeconomic factors. It did not make clear whether this was the petitioner's own in-house project for development of a product for subsequent sale, or whether the software was being developed at the behest of a client for that client's use. It does not reveal the length of time the beneficiary would work on that project, the names of other team members, or their titles and duties.

In his July 31, 2009 letter, the petitioner's president stated that the evidence submitted shows "that [the petitioner has] sufficient work and resources to ensure that the beneficiary will be performing services in the specialty occupation of Software-Developer-J2EE for the requested period of employment." The petitioner's president further stated that the CSMA project is anticipated to require two man/years of work, but did not state how many workers would be assigned to the project. The president's assertion does not, therefore, indicate the period of time during which the project would be completed.<sup>1</sup>

The petitioner's president also stated:

We had indicated in our original petition that the place of employment of the beneficiary would be the location of our registered corporate office in Edison, New Jersey. It is based on the fact that the location has been the *nerve center* or our operations from where the operations are managed and the where [sic] business decisions are made. It has been at this location where the product "**Credit Scoring Model Analytics Engine**" (**CSMA Engine**) has been conceptualized in great detail and where a significant amount of time has been expended towards the project. We have been operating a very successful business operation without having to rent or own real estate in addition to our Edison office. Such space requirement decisions have been based on business necessity. Further, we are also mindful of the fact that advancements made in technology today allow working from remote sites possible in certain instances.

[Emphasis in the original.]

The AAO notes that the petitioner's president neither stated nor implied that the beneficiary would work at the petitioner's Edison, New Jersey corporate office, nor that he would telework, nor that he would work in any other identified location.

Although the evidence then submitted appears to imply that CSMA Engine is the petitioner's own in-house project, none of the evidence then submitted made explicit whether the beneficiary would work in an in-house project or on the project of another company. The AAO notes that, if CSMA Engine is the petitioner's in-house project, then the petitioner failed to provide, as requested, the length of time the beneficiary is expected to work on the CSMA Engine project, the names of team members assigned to the project, and their titles and duties.

If, on the other hand, CSMA Engine is the project of another company, the petitioner failed to provide, as requested, the location at which the beneficiary would work, the name of the end-client for whom he would work, whether he would be provided to the end-client through an intermediary company, and who would supervise the beneficiary.

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<sup>1</sup> The AAO also notes that even if the petitioner had asserted that the beneficiary would perform the entire two man/years of work the project requires, that would employ the beneficiary for only two years, whereas the requested period of employment encompasses three years.

The director denied the petition on August 24, 2009, finding, as was noted above, that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation.

On appeal, counsel submitted a letter, dated September 3, 2009, from [REDACTED] and his own letter, dated September 31, 2009.

The letter from [REDACTED] states that the petitioner's president had then been working for Standard & Poor's since November 2007, and that he was then developing a CSMA Engine. It further stated, "This is useful for the rating of Residential Mortgage-Backed Securities," and that the petitioner's president would subsequently develop "other Credit Models for European RMBS/ABS and CMBS."

In his own letter, counsel stated that the evidence submitted in response to the RFE addressed all of the issues it raised. He further stated that the evidence previously provided, together with the letter from Standard & Poor's, "irrefutably establishes that we have provided sufficient documentary evidence to clearly show that the job offered qualifies as a 'specialty occupation.'"

The AAO notes that the evidence provided on appeal appears to indicate that CSMA Engine is a project of Standard & Poor's on which the petitioner's president works as a consultant, but does not explicitly so state. It suggests, thereby, that the beneficiary would also work for Standard & Poor's as a consultant on that project. It does not, however, indicate the location at which the beneficiary would work and whether he would be provided to Standard & Poor's through an intermediary company. Further, if the petitioner had provided that evidence, which is relevant to the material issue of whether the petitioner would be the beneficiary's actual employer, the AAO would decline to consider it, as it was specifically requested in the RFE and not timely provided in response.

U.S. Citizenship and Immigration Services regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). The purpose of a Request for Evidence (RFE) is to elicit further information that clarifies whether eligibility for the benefit sought has been established. *See generally* 8 C.F.R. § 103.2(b)(8).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. Pursuant to *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988), that evidence would not be considered if submitted on appeal.

The AAO will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup> In this instance, the petitioner may be able to meet the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

The *Handbook* chapter entitled Computer Software Engineers and Programmers states the following:

*Computer software engineers design and develop software. They apply the theories and principles of computer science and mathematical analysis to create, test, and evaluate the software applications and systems that make computers work. The tasks performed by these workers evolve quickly, reflecting changes in technology and new areas of specialization, as well as the changing practices of employers. (A separate section on computer hardware engineers appears in the engineers section of the *Handbook*.)*

Software engineers design and develop many types of software, including computer games, business applications, operating systems, network control systems, and middleware. They must be experts in the theory of computing systems, the structure of software, and the nature and limitations of hardware to ensure that the underlying systems will work properly.

Computer software engineers begin by analyzing users' needs, and then design, test, and develop software to meet those needs. During this process they create flowcharts, diagrams, and other documentation, and may also create the detailed sets of instructions, called algorithms, that actually tell the computer what to do. They also may be responsible for converting these instructions into a computer language, a process called programming or coding, but this usually is the responsibility of *computer programmers*.

Computer software engineers can generally be divided into two categories: applications engineers and systems engineers. *Computer applications software engineers* analyze end users' needs and design, construct, deploy, and maintain general computer applications software or specialized utility programs. These workers use different programming languages, depending on the purpose of the program and the environment in which the program runs. The programming languages most often used are C, C++, Java, and Python. Some software engineers develop packaged computer applications, but most create or adapt customized

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<sup>2</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

applications for business and other organizations. Some of these workers also develop databases.

The referenced section of the U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos303.htm> (last accessed September 26, 2011).

As to the duties of computer programmers, the *Handbook* also states:

*Computer programmers* write programs. After computer software engineers and systems analysts design software programs, the programmer converts that design into a logical series of instructions that the computer can follow.

The description of the duties of the proffered position does not make clear whether it is a computer applications software engineer position or a computer programmer position. That distinction, however, does not affect the result of this analysis, as the *Handbook* does not indicate that either computer software engineer positions or computer programmer positions categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty.

As to the education required for software engineer positions, the *Handbook* states:

For software engineering positions, most employers prefer applicants who have at least a bachelor's degree and broad knowledge of, and experience with, a variety of computer systems and technologies. The usual college majors for applications software engineers are computer science, software engineering, or mathematics.

As to the education required for computer programmer positions, the *Handbook* states:

Many programmers require a bachelor's degree, but a 2-year degree or certificate may be adequate for some positions. Some computer programmers hold a college degree in computer science, mathematics, or information systems, whereas others have taken special courses in computer programming to supplement their degree in a field such as accounting, finance, or another area of business.

That *most* employers *prefer* software engineering position applicants with a bachelor's degree, or that many computer programmer positions require a degree does not indicate that it is normally a minimum requirement for the position. Further, that the *usual* college majors for prospective software engineers include computer science, software engineering, and mathematics makes clear that, even for those software engineer position that require a degree, a degree in an array of subjects may suffice. The inclusion of mathematics with computer science and software engineering makes clear that even those software engineer positions that may require a minimum of a bachelor's degree do not require a degree in any specific specialty.

Similarly, that *some* computer programmers have degrees in computer science, mathematics, or information systems makes clear that, even for those computer programmer positions that may require a degree, again, a degree in an array of subjects may suffice. That other computer programmers have degrees in accounting or finance makes that point even more clear. Further, the *Handbook* makes clear that a two-year degree is sufficient for some positions. The *Handbook* offers no support for the proposition that computer programmer is categorically a specialty occupation position by virtue of normally requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

By stating, ". . . we have sufficient work and resources to ensure that the beneficiary will be performing services in the specialty occupation of Software-Developer-J2EE for the requested period of employment," the petitioner's president, in his July 31, 2009 letter, implied that Software Developer J2EE, the position proffered in the instant case, is categorically a specialty occupation position. However, the evidence submitted does not support that proposition.

Whether the proffered position is analyzed as a computer software engineer position, a computer programmer position, or, more specifically, a J2EE software developer, the result is the same. The petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As was observed above, the *Handbook* provides no support for the proposition that the petitioner's industry, or any other, requires a minimum of a bachelor's degree or the equivalent in a specific specialty to work in the proffered position. The record contains no evidence pertinent to a professional association of software engineers, computer programmers, or J2EE software developers that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the petitioner's industry. In short, the record contains no evidence pertinent to the requirements of other companies in the petitioner's industry.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner demonstrates that, notwithstanding that other positions in the petitioner's industry may not require a minimum of a bachelor's degree or the equivalent in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such a degree.

The description of the duties of the proffered position provided in the petitioner's president's March 28, 2009 letter indicates that the proffered position requires a strong background in Java Server side programming; extensive programming experience; a detailed working knowledge of J2EE, C++ & JAX web service technologies; experience working with Enterprise Java Beans, tomcat & apache Ant; an excellent knowledge of advanced mathematics & engineering concepts; strong analytical skills; the ability to work with personnel in the business functional areas; and the ability to research and identify the best technical solution that would support the most efficient business processes. The petitioner's president stated that the beneficiary would perform new application implementations, product enhancements, and application integrations; test completed solution implementations; and provide post implementation technical support. The petitioner's president provided no evidence, however, that any of those attributes or duties makes the proffered position so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree or the equivalent in any specific specialty. The record contains no other evidence on that point.

As the petitioner has not shown that the particular position proffered is so complex or unique that it can be performed only by an individual with at least a bachelor's degree, or the equivalent, in a specific specialty, it has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>3</sup>

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<sup>3</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the

Finally, the AAO will address the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner demonstrates that the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent.

The AAO observes that the petitioner asserted that performance of the duties of the proffered position requires a strong background in Java Server side programming, extensive programming experience; a detailed working knowledge of J2EE, C++ & JAX web service technologies; experience working with Enterprise Java Beans; tomcat & apache Ant; an excellent knowledge of advanced mathematics & engineering concepts; strong analytical skills; the ability to work with personnel in the business functional areas; and the ability to research and identify the best technical solution that would support the most efficient business processes. However, the AAO finds that it is not self-evident that these attributes are usually associated with the attainment of at least a bachelor's degree in a specific specialty. Further, the AAO finds that nothing in the record of proceeding demonstrates that the nature of performing new application implementations, product enhancements, and application integrations; testing completed solution implementations; and providing post implementation technical support is so specialized and complex that the knowledge associated with those duties is usually associated with the attainment of a baccalaureate or higher degree in any specific specialty.

The petitioner has not demonstrated that the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO finds that the director was correct in his determination that the record before him failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the evidence and argument submitted on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

The record suggests an issue that was not discussed in the decision of denial. In the June 23, 2009 RFE the service center requested, if the beneficiary would work on the project of an end-client, that the petitioner identify the prospective end-client, the location at which the beneficiary would work, and whether he would be provided to that end-client through an intermediary company.

The service center requested that if, on the other hand, the beneficiary would work on the petitioner's own in-house project, the petitioner indicate the length of time the beneficiary is expected to work on it, the names of other team members assigned to the project, and their titles and duties.

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occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The RFE required the petitioner to reveal whether the beneficiary would work on an in-house project, or on a project for another company, but the petitioner did not.<sup>4</sup> It also required that, having revealed that, the petitioner provide the evidence requested pertinent either to the in-house or end-client project. The petitioner did not then provide that evidence,<sup>5</sup> which, as was noted above, is relevant to the material issue of whether the petitioner would be the beneficiary's actual employer. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The appeal will be dismissed and the visa petition denied on this additional basis.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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. The appeal will be dismissed and the petition denied.

**ORDER:** The appeal is dismissed. The petition is denied.

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<sup>4</sup> In response the petitioner's president seemed to imply that the CMSA is the petitioner's own in-house project. On appeal, however, the letter from Standard & Poor's appeared to imply that the petitioner is developing that project for Standard & Poor's. This issue has never been satisfactorily reconciled.

<sup>5</sup> Although the petitioner subsequently indicated that the beneficiary would work for Standard & Poor's, that information was previously requested in the June 23, 2009 RFE, and not then provided. Although that client has been identified on appeal, pursuant to *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988), that information will not be considered.