

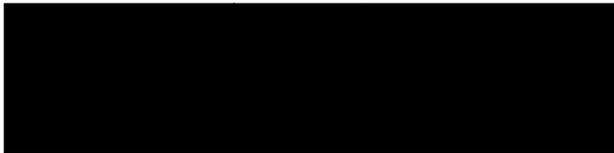
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D2

Date: **FEB 07 2012**

Office: VERMONT SERVICE CENTER

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

Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. A subsequent motion to reconsider that decision was dismissed for failure to timely file that motion. The petitioner filed a second motion to reconsider and, although it was granted, the director affirmed his initial decision to deny the petition. That decision 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 nonprofit corporation with 12 employees. To employ the beneficiary in what it designates as a Civil Engineer I 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 initially denied the petition on December 30, 2008 because he found (1) that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation, and (2) that the beneficiary had been in H or L nonimmigrant status for the maximum six years and did not otherwise qualify for an extension of his visa status.

On motion submitted February 3, 2009, counsel asserted the evidence submitted demonstrates that both of those bases for denial were erroneous. The director dismissed that motion as untimely filed. Counsel filed another motion on May 15, 2009, asserting that the previous motion should not have been dismissed as untimely.

In a decision issued on August 19, 2009 granting the motion, the director found that, assuming the visa petition is otherwise approvable, the beneficiary is entitled to an extension beyond the ordinary six-year limit. However, the director also found that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation, and that the petitioner had not demonstrated that the beneficiary is qualified to work in the proffered position.

On appeal, counsel asserted the evidence submitted demonstrates that the petitioner would employ the beneficiary in a specialty occupation, but he did not address the director's finding pertinent to the beneficiary's qualifications.

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) issued on May 7, 2008; (3) the response to the May 7, 2008 RFE; (4) the service center's RFE issued on August 5, 2008, (5) the response to the August 5, 2008 RFE, (6) director's denial letter, (7) the petitioner's initial motion to reconsider, (8) the decision dismissing that motion, (9) the petitioner's second motion to reconsider, (10) the decision granting that second motion but again denying the visa petition, and (11) 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 (5th 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 visa petition, counsel submitted evidence that the beneficiary was awarded a degree in civil engineering at the National University of Columbia School of Engineering and that his degree is equivalent to a bachelor’s degree in civil engineering awarded in the United States.

In a letter dated October 24, 2007, and submitted with the visa petition, the petitioner’s president provided the following description of the duties of the proffered position:

[T]he beneficiary will be responsible for assisting Project Civil Engineers (Supervisors) in analyzing survey reports, maps, drawings, blueprints, aerial photography, and other topographical or geologic data to plan projects; assisting in the planning and design (using CADD and computer design software) of access structures (under supervision); assisting in computing load and grade requirements, water flow rates, and material stress factors to determine design specifications; inspecting project sites to monitor progress and ensure conformance to design specifications and safety standards; estimating quantities and cost of materials, equipment, or labor to determine project feasibility; and preparing status reports for upper management.

The petitioner’s president further stated, “The [proffered position] requires that the candidate have a Bachelor’s degree in Civil Engineering or a related field.”

On May 7, 2008 the service center issued an RFE in this matter. The service center requested, *inter alia*, (1) documentary evidence of the petitioner’s past or present projects, (2) copies of contracts for the petitioner’s services, (3) an organizational chart of the petitioner’s employees, and (4) evidence

that the petitioner currently requires, or previously required, a minimum of a bachelor's degree or the equivalent in a specific specialty for employees in the proffered position.

The petitioner's response to that request did not include (1) evidence pertinent to past or present projects, (2) copies of contracts, (3) an organizational chart, or (4) evidence that the petitioner has ever required a minimum of a bachelor's degree or the equivalent in a specific specialty to work in the proffered position.

The service center issued another RFE on August 5, 2008. The service center requested, *inter alia*, evidence that the beneficiary is licensed to practice civil engineering in Florida, the state of intended employment, or, in alternative, evidence that licensure is not required in order to perform the duties of the proffered position. In his response to the RFE, counsel provided no evidence that the beneficiary is licensed as a civil engineer in Florida or that licensure is not required in order to perform the duties of the proffered position.

The director initially denied the visa petition on December 30, 2008. In response to that decision, counsel submitted a motion, dated February 3, 2009, in which he asserted that licensure as a civil engineer is not required in order to perform the duties of the proffered position and submitted a section of Florida law to support that assertion.

The AAO notes that the August 5, 2008 RFE specifically requested either evidence that the beneficiary is licensed to practice civil engineering in Florida or evidence that licensure is not required in order to perform the duties of the proffered position. Counsel's response to that RFE did not include either type of evidence.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it. The petitioner failed to timely submit the requested, material evidence. The AAO will not consider the evidence on that point subsequently submitted after the visa petition was adjudicated for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).¹

On April 14, 2009, the February 3, 2009 motion was dismissed as untimely. Counsel filed a second motion, dated May 15, 2009. With it, he provided an evaluation, dated January 29, 2009 and prepared by an associate professor at the University of Florida College of Engineering, School of Civil Engineering, of the beneficiary's education and work experience. In addition to evaluating the

¹ Even if the AAO were to consider this evidence submitted on motion, it does not support counsel's claims regarding the exemption from licensure in the State of Florida to perform any civil engineering duties required of the proffered position. More specifically, the exemption cited by counsel is limited to the "design or fabrication of manufactured products and servicing of such products. As the beneficiary's claimed duties relate to "engineering duties in planning, designing and overseeing construction and maintenance of building structures[] and facilities," it is clear that the referenced manufactured products licensing exemption would not apply to this position insofar as the performance of civil engineering duties for the petitioner's business is concerned.

beneficiary's education and experience, that evaluation states that the proffered position requires a bachelor's degree in civil engineering.²

Counsel also provided an unsigned, unattributed statement on the petitioner's letterhead. It lists various projects that it alleges the petitioner is or has been involved in. It was accompanied by no evidence to corroborate the existence of those projects or the petitioner's involvement in them.

The AAO observes that the RFE issued on May 7, 2008 requested documentary evidence of the petitioner's past or present projects. The petitioner did not timely submit that requested, material evidence. Again, as per *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988), that evidence, which was previously requested and not timely submitted, prior to the petition's initial adjudication, will not be considered for any purpose.

The director denied the petition most recently on August 19, 2009, finding, as was noted above, that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation or that the beneficiary is qualified to perform the duties of the proffered position.

On appeal, counsel asserted that the evidence submitted is sufficient to show that the petitioner would employ the beneficiary in a specialty occupation and that the beneficiary is qualified to perform the duties of the proffered position. In so asserting, counsel relied upon the Florida statute and the unsigned, unattributed, uncorroborated list of the petitioner's projects, which, as was noted above, were not timely submitted and will not be considered.

The AAO will now address the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). It 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 a bachelor's or higher degree in a specific specialty or its equivalent is normally the minimum entry requirement for that particular position.

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

² In addition to stating that the proffered position requires a minimum of a bachelor's degree or the equivalent in civil engineering, the associate professor stated that, based on the beneficiary's education and experience, the beneficiary is qualified to work in the proffered position. The AAO notes that the professor's statement is tantamount to an assertion that the beneficiary's education and experience, taken together, are equivalent to a minimum of a bachelor's degree or the equivalent in civil engineering. The associate professor's assertion of that equivalent is not competent evidence, as it does not conform to the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D).

However, because an education evaluation submitted with the visa petition credibly established that the beneficiary's foreign degree is equivalent to a bachelor's degree in civil engineering earned in the United States from an accredited college or university, the AAO need not dwell on the insufficiency of the associate professor's January 29, 2009 evaluation.

of occupations that it addresses. The *Handbook* describes the duties of civil engineer positions, in the chapter entitled Engineers, as follows:

Civil engineers design and supervise the construction of roads, buildings, airports, tunnels, dams, bridges, and water supply and sewage systems. They must consider many factors in the design process from the construction costs and expected lifetime of a project to government regulations and potential environmental hazards such as earthquakes and hurricanes. Civil engineering, considered one of the oldest engineering disciplines, encompasses many specialties. The major ones are structural, water resources, construction, transportation, and geotechnical engineering. Many civil engineers hold supervisory or administrative positions, from supervisor of a construction site to city engineer. Others may work in design, construction, research, and teaching.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos027.htm> (last accessed January 23, 2012).

The *Handbook* describes the duties of civil engineering technicians, in the chapter entitled Engineering Technicians, as follows:

Civil engineering technicians help civil engineers plan and oversee the construction of highways, buildings, bridges, dams, wastewater treatment systems, and other structures. Some estimate construction costs and specify materials to be used, and some may even prepare drawings or perform land-surveying duties. Others may set up and monitor instruments used to study traffic conditions.

Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos112.htm> (last accessed January 23, 2012).

The proposed duties of the proffered position described in the petitioner's October 24, 2007 letter from its president do not make clear to the AAO whether the proffered position is a position for a civil engineer, rather than for a civil engineering technician. As evidence on that point, the petitioner provided the January 29, 2009 evaluation prepared by the associate professor at the University of Florida. The associate professor paraphrased the president's description of the duties of the proffered position provided in his October 24, 2007 letter, and stated, without analysis, "The [proffered] position . . . requires . . . a Bachelor's degree in Civil Engineering."

The evaluator's opinion is conclusory. The evaluator cites no studies, reports, statistics, other authoritative references, or any substantive basis for his conclusions. He did not explain why the duties of the proffered position, or any one of them, could not be performed by a person without a minimum of a bachelor's degree or the equivalent in civil engineering. He did not contrast those duties with the *Handbook* description of the duties of civil engineering technicians. As such, the AAO accords no probative weight to the evaluator's opinion. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in

accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The evidence submitted does not demonstrate that the proffered position is a civil engineer position, rather than a civil engineering technician position. The *Handbook* describes the educational requirements of engineering technician positions, including civil engineering technician positions, as follows:

Although it may be possible to qualify for certain engineering technician jobs without formal training, most employers prefer to hire someone with a 2-year associate degree or other postsecondary training in engineering technology. Workers with less formal engineering technology training need more time to learn skills while on the job. Prospective engineering technicians should take as many high school science and math courses as possible to prepare for programs in engineering technology after high school.

The evidence does not demonstrate that the proffered position is a civil engineer position rather than a civil engineering technician position. The evidence does not demonstrate that civil engineering technician positions qualify as specialty occupation positions by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty. Therefore, 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, satisfied 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 for the proffered civil engineering technician position. The record contains no evidence pertinent to a professional association that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry into the proffered position. The record contains no letters or affidavits from others in the petitioner's industry. For the reasons explained above, the evaluation from the associate professor will be accorded no evidentiary weight. The

record contains no other evidence pertinent to the requirements of the petitioner's industry for parallel positions in similar organizations.

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, satisfied 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 similar 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 is the only evidence that might have differentiated the proffered position from other such positions. Those duties, however, contain no indication of complexity or uniqueness such that the position can only be performed by an individual with a minimum of a bachelor's degree or the equivalent in a specific specialty. Assisting project civil engineers in analyzing survey reports, maps, drawings, blueprints, aerial photography, and other topographical or geologic data to plan projects; and assisting in the planning and design of access structures may or may not require a minimum of a bachelor's degree or the equivalent in a specific specialty. The AAO cannot make that determination without a more concrete description of the duties of the position and a clear explanation of why those duties require a minimum of a bachelor's degree or the equivalent in a specific specialty.

The petitioner has not demonstrated that the particular position proffered is 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 a specific specialty, and has not, therefore, met the requirements of 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).³

³ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences; if any, can be drawn from less than a dozen job postings with regard to determining the common educational requirements for entry into parallel positions in similar religious organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

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.

Again, however, the duties of the proffered position are so abstractly described that the AAO is unable to determine that they require a minimum of a bachelor's degree or the equivalent in a specific specialty. Assisting in computing load and grade requirements, water flow rates, and material stress factors to determine design specifications; and inspecting project sites to monitor progress and ensure conformance to design specifications and safety standards contain no indication of relative specialization and complexity beyond a normal civil engineering technician such that a bachelor's degree in a specific specialty or its equivalent would usually be associated with the performance of these duties. Another of the duties of the proffered position, estimating construction costs, is explicitly included in the *Handbook* description of a civil engineering technician's duties, which position does not, according to the *Handbook*, require a minimum of a bachelor's degree or the equivalent in a specific specialty.

The AAO finds that, to the extent that they are described, the proposed duties do not convey a usual association between the knowledge required to perform them and the attainment of a particular educational level in a specific specialty. Rather, the AAO finds that the proposed duties are presented in the record of proceeding in terms of generalized and generic functions that, as so generally described, fail to convey that their performance would require application of a particular level of a body of highly specialized knowledge that is usually associated with attainment of a particular level of educational attainment in a specific specialty. As the petitioner has not established that the proffered position's specific duties require the application of a level of specialized and complex knowledge usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific discipline, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has failed to establish that it meets any of the additional, supplemental criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), 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 submissions on motion and on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

As such, even if the job announcements supported the finding that the position of director of religious activities and education for a two-person religious organization required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Also, at a more basic level, as reflected in this decision's discussion of the evidentiary deficiencies, the record lacks credible evidence that when the petitioner filed the petition, the petitioner had secured work of any type for the beneficiary to perform during the requested period of employment. Although the service center requested, in its May 7, 2008, RFE, copies of contracts for the petitioner's services, no such evidence has been submitted. The only evidence submitted that the petitioner has ever worked on any projects is an unsigned, unattributed, uncorroborated list of projects, which list, as was noted above, was not timely submitted and will not be considered.

The petitioner has not only failed to demonstrate that it would employ the beneficiary in a specialty occupation, it has failed to demonstrate that it has any work at all for the beneficiary to perform. For this reason also, the appeal will be dismissed and the petition denied.

The remaining issue cited in the decision of denial is the director's finding that the petitioner failed to demonstrate that the beneficiary is qualified to hold the proffered position. Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states, in pertinent part, that an alien applying for classification as an H-1B nonimmigrant worker must possess: "full state licensure to practice in the occupation, if such licensure is required to practice in the occupation."

The August 5, 2008 RFE, included the following request:

Please submit a copy of the beneficiary's license to practice as a civil engineer in Florida or submit evidence from the appropriate licensing authority that no license is required.

Counsel and the petitioner failed to timely submit that requested evidence, and the visa petition was denied, in part, based upon that failure to show that the beneficiary is qualified to hold the proffered position. Subsequently, counsel submitted a section of Florida law, asserting that it shows that the beneficiary is exempt from such licensure. As was noted above, this submission was not responsive to a request for either evidence of licensure or "evidence from the appropriate licensing authority that no license is required" to work in the proffered position. In any event, the evidence was not timely submitted in response to the service center's request and, as was noted above, will not be considered.

The record contains no timely submitted evidence either that the beneficiary is a licensed Florida civil engineer or that the proffered position is exempt from licensure based on the duties as portrayed by the petitioner. As such, the petitioner has not demonstrated that the beneficiary is qualified to work in the proffered position pursuant to section 214(i)(2) of the Act. The appeal will be dismissed and the visa petition denied on this additional basis.

Beyond the decision of the director, the AAO finds that the petition must also be denied on an additional basis, which will now be discussed, that was not addressed in the director's decision. The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the exercise of this function that the AAO identified these additional grounds for denying the petition.

The RFEs issued in this case requested (1) documentary evidence of the petitioner's past or present projects, (2) copies of contracts for the petitioner's services; (3) an organizational chart of the petitioner's employees; (4) evidence that the petitioner currently requires, or previously required, a minimum of a bachelor's degree or the equivalent in a specific specialty for employees in the proffered position; and (5) evidence that the beneficiary is licensed to practice civil engineering in Florida, the state of intended employment, or, in the alternative, evidence that licensure is not required in order to perform the duties of the proffered position.

The petitioner did not timely submit evidence of the petitioner's projects or evidence pertinent to licensure. The petitioner never submitted copies of contracts for the petitioner's services, evidence that it ever required a minimum of a bachelor's degree or the equivalent in a specific specialty for the proffered position, or an organizational chart. The requested organizational chart is material to the relevant issue of the nature of the petitioner's business and the work the beneficiary would perform. Evidence that the petitioner requires or required a minimum of a bachelor's degree or the equivalent in a specific specialty is material to the issue of whether the proffered position qualifies as a specialty occupation position. Evidence pertinent to the petitioner's past and pending projects and copies of contracts for the petitioner's services are material to the relevant issue of whether the petitioner has specialty occupation employment for the beneficiary and, in fact, whether it has any work for him to perform at all. Evidence pertinent to licensure is material to whether the beneficiary is qualified to work in the proffered position.

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.

The appeal will be dismissed and the visa petition will be denied on each of the bases described above, with each considered as an independent and alternative basis for the decision. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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