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**U.S. Citizenship
and Immigration
Services**

D2



Date: **JUN 12 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a hotel and conference center with 54 employees. It seeks to employ the beneficiary as a part-time systems engineer and 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 on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires 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 [(2)] requires 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, a proposed 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 particular positions 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.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires

the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In support of the Form I-129, the petitioner submitted, *inter alia*, the following documents: (1) the petitioner's support letter, dated November 18, 2009; (2) a copy of the beneficiary's resume; (3) a copy of the beneficiary's foreign Bachelor of Science degree in Mechanical Engineering; (4) a copy of the beneficiary's foreign transcript; and (5) an evaluation of the beneficiary's foreign degree by Terry Erb.

In the petitioner's support letter, the petitioner states that the beneficiary's job duties will be as follows:

- [M]anage repair and operational requirements of mechanical and electrical systems, including electricity, heating and air conditioning, elevators, and specialized facilities in [a] large hotel and conference center built in 1983[;]
- [S]upervise maintenance staff and outside repair and maintenance contractors[;]
- [E]valuate and recommend replacement systems as required[;]
- [D]esign adaptations of existing systems and new systems to be acquired to meet existing operating conditions[;]
- [S]pecify structural repairs and modifications necessary to support mechanical, electrical, and electro-mechanical systems; and
- [E]stimate costs for projects and monitor activity as required to authorize progress payments for these projects.

On January 12, 2010, the director issued an RFE requesting the petitioner to submit documentation highlighting the nature, scope, and activity of the petitioner's business in order to establish that the beneficiary will be employed with the duties set forth by the petitioner such as: (1) a detailed description of the proffered position, to include approximate percentages of time for each duty that the beneficiary will perform; (2) copies of written contracts (or work orders) between the petitioner and the beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the beneficiary will be employed that indicates the services being provided by the petitioner and/or the beneficiary; (3) documentation of how many other individuals in the petitioner's establishment are currently, or were, employed in the position or similar positions; and/or (4) a brief job description for each of the petitioner's employees to include job title and education requirements (degree held). The director also requested that the petitioner submit evidence showing that a bachelor's degree in a specific specialty is a standard minimum requirement for the proffered position in the petitioner's company or industry.

On February 26, 2010, in response to the director's RFE, the petitioner explained that the petitioner's business is primarily that of a "conference center with the hotel rooms and food service facilities appropriate for conferences including participants and attendees who are not from the local area." The petitioner also asserted that the systems engineer position is a Mechanical Engineer position and classified by the Department of Labor as such under O*NET

Code 17-2141. The petitioner stated that the proffered position requires seven out of the ten "Tasks" for Mechanical Engineers specified in the O*NET report:

- 1) Read and interpret blueprints, technical drawings, schematics, or computer-generated reports[;]
- 2) Assist drafters in developing the structural design of products using drafting tools or computer-assisted design (CAD) or drafting equipment and software[;]
- 3) Research, design, evaluate, install, operate, and maintain mechanical products, equipment, systems and processes to meet requirements, applying knowledge of engineering principles[;]
- 4) Confer with engineers or other personnel to implement operating procedures, resolve system malfunctions, or provide technical information.
- 5) Recommend design modifications to eliminate machine or system malfunctions[;]
- 6) Investigate equipment failures and difficulties to diagnose faulty operation, and to make recommendations to maintenance crew[; and]
- 7) Specify system components or direct modification of products to ensure conformance with engineering design and performance specifications.

The petitioner stated that the "installation, operation and maintenance of these systems is and will be performed by other employees or outside contractors, as appropriate." With respect to the director's request that the petitioner provide approximate percentages of time for each duty that the beneficiary will perform, the petitioner stated that "[i]t is not meaningful to specify approximate percentages since the percentages will vary from day-to-day and from week-to-week."

The petitioner also stated that there are no other employees holding the same or similar position and that the oral agreement between the petitioner and the beneficiary provides that the beneficiary will work 25 hours per week at \$25.72 per hour. Despite the director's request, the petitioner did not submit any documentation highlighting the nature, scope, and activity of the petitioner's business.

The director denied the petition on April 2, 2010, finding that the proffered position is not a specialty occupation. The director found that the duties of the proffered position reflect the duties performed by Maintenance and Repair Workers, as described in the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*) under the title "Maintenance and Repair Workers, General." See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "General Maintenance and Repair Workers," <http://www.bls.gov/ooh/installation-maintenance-and-repair/general-maintenance-and-repair-workers.htm> (last visited May 16, 2012).¹ The director concluded that the evidence was insufficient to show that the proffered position qualifies as a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Act.

¹ The director's decision referred to the 2010-2011 edition of the *Handbook*. All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/oco/>.

On appeal, counsel for the petitioner contends that the director erroneously determined that the proffered position is for a maintenance worker. According to counsel, "[m]aintenance workers use wrenches and screwdrivers" while "[e]ngineers use computers, field testing, and a knowledge of what components and systems are available and their operational characteristics." Counsel for the petitioner also contends that "supervision of maintenance workers is not the job of the maintenance worker" and maintenance workers "perform the actual repairs" and "they are not the person who designs and specifies the repairs or modifications to be made." Rather, the position is one that requires an "engineering education of at least a bachelor's degree level."

As a preliminary matter, the petitioner's claim that a bachelor's degree in "engineering" is a minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. The AAO notes that such an assertion, i.e., the duties of the proffered position can be performed by a person with a degree in any number of disciplines, indicates that the proffered position is not, in fact, a specialty occupation.

More specifically, the field of engineering is a very broad category that covers numerous and various disciplines, some of which are only related through the basic principles of science and mathematics, e.g., petroleum engineering and aerospace engineering. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or engineering, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).²

² Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 (Comm'r 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in engineering. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The AAO disagrees with the petitioner's claim that the proffered position is that of a mechanical engineer. Given the lack of detail and corroborating evidence, the AAO cannot determine that the proffered position substantially reflects the duties of a mechanical engineer. The occupation of "Mechanical Engineer" is described as follows by the *Handbook*:

What Mechanical Engineers Do

Mechanical engineering is one of the broadest engineering disciplines. Mechanical engineers research, design, develop, build, and test mechanical devices, including tools, engines, and machines.

Duties

Mechanical engineers typically do the following:

- Analyze problems to see how a mechanical device might help solve the problem
- Design or redesign mechanical devices, creating blueprints so the device can be built
- Develop a prototype of the device and test the prototype
- Analyze the test results and change the design as needed
- Oversee the manufacturing process for the device

Mechanical engineers use many types of tools, engines, and machines. Examples include the following:

- Power-producing machines such as electric generators, internal combustion engines, and steam and gas turbines
- Power-using machines, such as refrigeration and air-conditioning
- Industrial production equipment, including robots used in manufacturing
- Other machines inside buildings, such as elevators and escalators
- Machine tools and tools for other engineers
- Material-handling systems, such as conveyor systems and automated transfer stations

Like other engineers, mechanical engineers use computers extensively. Computers help mechanical engineers to do the following:

- Produce and analyze designs
- Simulate and test how a machine is likely to work
- Generate specifications for parts
- Monitor the quality of products
- Control manufacturing and production

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Mechanical Engineers," <http://www.bls.gov/ooh/architecture-and-engineering/mechanical-engineers.htm#tab-2> (last visited May 16, 2012). The petitioner has failed to submit any corroborating evidence demonstrating that the beneficiary will be researching, designing, developing, building, and testing tools, engines, and machines. Furthermore, the petitioner has failed to demonstrate that it has a need for such duties performed by mechanical engineers or that such duties would be reasonable in the context of its hospitality business. 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)).

Based on the petitioner's statements, the AAO finds that the duties described by the petitioner appear to comport more closely with the duties of a "General Maintenance and Repair Worker" and "Stationary Engineer." While the petitioner's counsel states that "[t]he supervision of maintenance workers is not the job of the maintenance worker," there is no indication in the *Handbook* or in the record that a maintenance worker cannot supervise other maintenance workers. In any event, the AAO notes that the petitioner has failed to submit documentary evidence corroborating its claim that the beneficiary will be supervising other maintenance workers. Such evidence may include an organizational chart, W-2s, job applications, and employment agreements.

The occupation of "General Maintenance and Repair Worker" is described as follows by the *Handbook*:

What General Maintenance and Repair Workers Do

General maintenance and repair workers maintain and repair machines, mechanical equipment, and buildings. They work on plumbing, electrical, and air-conditioning and heating systems.

Duties

General maintenance and repair workers typically do the following:

- Maintain and repair machines, mechanical equipment, and buildings
- Troubleshoot and fix faulty electrical switches
- Inspect and diagnose problems and figure out the best way to correct them, frequently checking blueprints, repair manuals, and parts catalogs
- Do routine preventive maintenance to ensure that machines continue to run smoothly
- Assemble and set up machinery or equipment
- Plan repair work using blueprints or diagrams
- Do general cleaning and upkeep of buildings and properties
- Order supplies from catalogs and storerooms
- Meet with clients to estimate repairs and costs
- Keep detailed records of their work

General maintenance and repair workers are hired for maintenance and repair tasks that are not complex enough to need the specialized training of a licensed tradesperson, such as a plumber or electrician.

They are also responsible for recognizing when a job is above their skill level and needs the skills of a tradesperson. For more information about other trade occupations, see the profiles on electricians; carpenters; heating, air-conditioning, and refrigeration mechanics and installers; and plumbers, pipefitters, and steamfitters.

Workers may fix plaster or drywall. They may fix or paint roofs, windows, doors, floors, woodwork, and other parts of buildings.

They also maintain and repair specialized equipment and machinery in cafeterias, laundries, hospitals, stores, offices, and factories.

They get supplies and repair parts from distributors or storerooms to fix problems. They use common hand and power tools such as screwdrivers, saws, drills, wrenches, and hammers to fix, replace, or repair equipment and parts of buildings.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "General Maintenance and Repair Workers," <http://www.bls.gov/ooh/installation-maintenance-and-repair/general-maintenance-and-repair-workers.htm#tab-2> (last visited May 16, 2012). Under the section "How to Become a General Maintenance and Repair Worker," the *Handbook* states the following:

How to Become a General Maintenance and Repair Worker

Jobs in this field typically do not require any formal education beyond high school. General maintenance and repair workers often learn their skills on the job. They start by doing simple tasks and watching and learning from skilled maintenance workers.

Education

Many maintenance and repair workers may learn some basic skills in high school shop or technical education classes, postsecondary trade or vocational schools, or community colleges.

Courses in mechanical drawing, electricity, woodworking, blueprint reading, science, mathematics, and computers are useful. Maintenance and repair workers often do work that involves electrical, plumbing, heating, and air-conditioning systems or painting and roofing tasks. Workers need a good working knowledge of many repair and maintenance tasks.

Practical training, available at many adult education centers and community colleges, is another option for workers to learn tasks such as drywall repair and basic plumbing.

Training

General maintenance and repair workers usually start by watching and learning from skilled maintenance workers. They begin by doing simple tasks, such as fixing leaky faucets and replacing light bulbs. They go on to more difficult tasks, such as overhauling machinery or building walls.

Some learn their skills by working as helpers to other types of repair or construction workers, including machinery repairers, carpenters, or electricians.

Because a growing number of new buildings rely on computers to control their systems, general maintenance and repair workers may need to know basic computer skills, such as how to log onto a central computer system and navigate through a series of menus. Companies that install computer-controlled equipment usually give on-site training for general maintenance and repair workers.

Certification

General maintenance and repair workers can show their competency by attaining voluntary certification. The Society for Maintenance and Reliability Professionals (SMRP) offers the Certified Maintenance and Reliability Professional (CMRP) designation to those who successfully complete the program and pass an exam. Certification can help applicants find jobs and provide them with better advancement opportunities.

Licensing

Licensing requirements vary by state and locality. For more complex tasks, workers may need to be licensed in a particular specialty, such as electrical or plumbing work.

Advancement

Some maintenance and repair workers decide to train in one specific craft and become craft workers, such as electricians, heating and air-conditioning

mechanics, or plumbers. Within small organizations, promotion opportunities may be limited.

Important Qualities

Computer skills. Many new buildings have automated controls. Workers must be able to navigate a centralized computer system to adjust and monitor the controls.

Customer-service skills. Workers interact with customers on a regular basis. They need to be friendly and able to address customers' questions.

Dexterity. Many technician tasks, such as repairing small devices, connecting or attaching components, and using handtools, require a steady hand and good hand-eye coordination.

Troubleshooting skills. Workers find, diagnose, and repair problems. They do tests to figure out the cause of problems before fixing equipment.

Id. at <http://www.bls.gov/ooh/installation-maintenance-and-repair/general-maintenance-and-repair-workers.htm#tab-4> (last visited May 16, 2012). The *Handbook's* description of "Stationary Engineers and Boiler Operators" is as follows:

What Stationary Engineers and Boiler Operators Do

Stationary engineers and boiler operators control stationary engines, boilers, or other mechanical equipment to provide utilities for buildings or for industrial purposes.

Duties

Stationary engineers and boiler operators typically do the following:

- Operate engines, boilers, and auxiliary equipment
- Read gauges, meters, and charts to track boiler operations
- Monitor boiler water, chemical, and fuel levels
- Activate valves to change the amount of water, air, and fuel in boilers
- Fire coal furnaces or feed boilers, using gas feeds or oil pumps
- Inspect equipment to ensure that it is operating efficiently
- Check safety devices routinely
- Record data and keep logs of operation, maintenance, and safety activity

Most large office buildings, malls, warehouses, and other commercial facilities have extensive heating, ventilation, and air-conditioning systems that maintain comfortable temperatures all year long. Industrial plants often have additional facilities to provide electrical power, steam, or other services. Stationary engineers and boiler operators control and maintain these systems, which include boilers, air-conditioning and refrigeration equipment, turbines, generators, pumps, and compressors.

Stationary engineers and boiler operators start up, regulate, repair, and shut down equipment. They monitor meters, gauges, and computerized controls to ensure that equipment operates safely and within established limits. They use sophisticated electrical and electronic test equipment when servicing, troubleshooting, repairing, and monitoring heating, cooling, and ventilation systems.

Stationary engineers and boiler operators also regularly perform routine maintenance. They may do a complete overhaul or replace defective valves, gaskets, or bearings. In addition, stationary engineers and boiler operators lubricate moving parts, replace filters, and remove soot and corrosion that can make a boiler less efficient.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Stationary Engineers and Boiler Operators," <http://www.bls.gov/ooh/production/stationary-engineers-and-boiler-operators.htm#tab-2> (last visited May 16, 2012). Under the section on "How to Become a Stationary Engineer or Boiler Operator," the *Handbook* states that:

How to Become a Stationary Engineer or Boiler Operator

Stationary engineers and boiler operators need at least a high school diploma. They typically begin their careers in mechanic or helper positions and are trained on the job by more experienced engineers.

Training

Stationary engineers and boiler operators typically learn their work through long-term on-the-job training. They learn their trade by working as helpers, mechanics, or technicians under the supervision of an experienced engineer. After training and gaining experience, they are eligible to advance to operator and engineer positions within that facility.

Some stationary engineers and boiler operators complete apprenticeship programs sponsored by the International Union of Operating Engineers. Apprenticeships usually last 4 years, include 8,000 hours of on-the-job training, and require 600 hours of technical instruction. Apprentices learn about the operation and maintenance of equipment; controls and balancing of heating, ventilation, and air conditioning (HVAC) systems; safety; electricity; and air quality.

Many employers encourage and pay for skill improvement training for their employees. Experienced stationary engineers and boiler operators update their skills regularly through training, especially when new equipment is introduced or when regulations change.

Licenses

Some state and local governments require licensure for stationary engineers and boiler operators. These governments typically have several classes of stationary engineer and boiler operator licenses. Each class specifies the type and size of equipment the engineer is permitted to operate without supervision.

A top-level engineer or operator is qualified to run a large facility, supervise others, and operate equipment of all types and capacities. Engineers and operators with licenses below this level are limited in the types or capacities of equipment they may operate without supervision.

Applicants for licensure usually must be at least 18 years of age, meet experience requirements, and pass a written exam. Many job openings require that workers be licensed before starting the job, although some jobs may offer apprenticeships. A stationary engineer or boiler operator who moves from one state or city to another may have to pass an examination for a new license because of regional differences in licensing requirements.

Education

Stationary engineers and boiler operators need at least a high school diploma. Students should take courses in math, science, and mechanical and technical subjects.

With the growing complexity of the work, vocational school or college courses may benefit workers trying to advance in the occupation.

Work Experience

Stationary engineers and boiler operators who do not complete a formal apprenticeship or vocational program usually need several years of work experience. Many gain experience working as maintenance helpers, mechanics, or technicians.

Advancement

Generally, stationary engineers and boiler operators advance as they obtain higher class licenses, which allow them to work with larger, more powerful, and more varied equipment. In jurisdictions where licenses are not required, workers usually advance by taking company-administered exams. Due to the growing complexity of the work, continuing education, such as taking vocational school or college courses, can benefit workers who want to advance in the occupation.

Important Qualities

Detail oriented. Stationary engineers and boiler operators monitor intricate machinery, gauges, and meters to ensure that everything is operating properly.

Manual dexterity. Stationary engineers and boiler operators must use precise motions to control or repair machines. They grasp tools and use their hands to perform many tasks.

Mechanical skills. Stationary engineers and boiler operators must know how to use tools and work with machines. They must be able to repair, maintain, and operate equipment.

Problem-solving skills. Stationary engineers and boiler operators must figure out how things work and quickly solve problems that arise with equipment or controls.

Technical skills. Stationary engineers and boiler operators must be able to understand and operate machines and electronic and computer controls.

Id. at <http://www.bls.gov/ooh/production/stationary-engineers-and-boiler-operators.htm#tab-4> (last visited May 16, 2012). Because the *Handbook* indicates that working as a general maintenance worker or a stationary engineer does not normally require at least a bachelor's degree in a specific specialty or its equivalent, the *Handbook* does not support the proffered position as being a specialty occupation.

As the evidence of record does not establish that the particular position proffered here is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 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.

Again, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

Here, and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Furthermore, for the reasons discussed below, the petitioner's reliance upon the job vacancy advertisements it submitted is misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of six advertisements. The advertisements provided, however, establish at best that a bachelor's degree is generally required for most of the positions posted, but a bachelor's degree or the equivalent in a *specific specialty* is not. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to

establish that the submitted advertisements are relevant as the record does not indicate that the posted job announcements are for parallel positions in similar organizations in the same industry.

Specifically, none of the six advertisements indicate that a bachelor's degree in a specific specialty is a requirement for entry into those positions. While the Viceroy Miami at Icon Brickell and Wyndham Worldwide advertisements state that an engineering degree is required, as stated above, the field of engineering is a very broad category that covers numerous and various disciplines, some of which are only related through the basic principles of science and mathematics, e.g., petroleum engineering and aerospace engineering. Again, since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or engineering, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558. Furthermore, the record lacks sufficient evidence to establish the petitioner as being similar to either the Viceroy Miami at Icon Brickell or Wyndham Worldwide in terms of its size and the type and level of services provided such that they could be found to be similar organizations.

As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.³

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The evidence of record does not refute the *Handbook's* information to the effect that a degree is not necessary for general maintenance worker and stationary engineer positions. Moreover, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions in the field of the proffered position that can be performed by persons without a specialty degree or its equivalent, particularly in parallel positions in organizations similar to the petitioner.

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 just six job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *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").

As such, even if the job announcements supported the finding that the position of systems engineer in a 54-employee hotel and conference center 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.

Next, as the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 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").

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Here, relative specialization and complexity have not been developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than general maintenance worker and stationary engineer positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications.

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

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