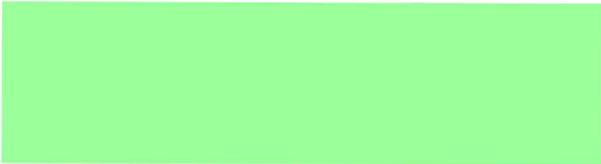




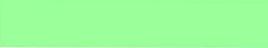
U.S. Citizenship
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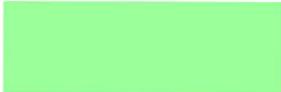
DATE: **JAN 11 2013**

OFFICE: VERMONT SERVICE CENTER

FILE: 

IN RE:

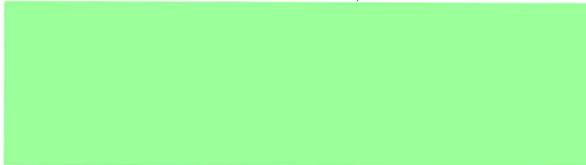
Petitioner:

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 in accordance with the instructions on 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,

Ron Rosenberg
Acting 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.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a hospitality business with 26 employees. It seeks to employ the beneficiary in what it designates as a full-time "Chief Engineer" position at its [REDACTED] motel 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. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 directly related to the duties and responsibilities of the particular position, 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, counsel for the petitioner submitted, *inter alia*, the following documents: (1) a certified Labor Condition Application (LCA); (2) the petitioner's support letter dated September 27, 2010; (3) an evaluation of the beneficiary's foreign degree; and (4) the petitioner's brochure indicating that it is the operator of a 121-room motel.

In its support letter, the petitioner states that it is offering the beneficiary the position of "Chief Engineer" and that the beneficiary will be responsible for the following duties:

- Direct, coordinate and exercise functional authority to plan, organized [sic], control, integrates [sic] and seek projects to completion within the assigned autonomy.
- Plan and formulate engineering program and allocate appropriate resources to compete [sic] the projects.
- Assign and coordinate staff members in the area of technical studies and product testing.
- Resolve engineering design and test problems; evaluate changes, specifications and drawing releases.
- Control project budget and prepare interim and completed project reports.

The petitioner also stated that the position requires a "Bachelor's Degree in Civil Engineering or its equivalent."

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on March 24, 2011. The petitioner was asked to submit additional documentation to establish that the proffered position qualifies for classification as a specialty occupation. The director outlined the specific evidence to be submitted.

In an April 20, 2011 response to the director's RFE, counsel for the petitioner contended that the proffered position qualifies as a specialty occupation. Citing to the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook's* (hereinafter the *Handbook*) chapter on civil engineers (2010-2011 Edition), counsel asserted that it is "understandable that a hotel is in need of a Civil Engineer since their structures and buildings have to be sound, licensed and up to par with city and state codes." Counsel also cited to the Occupational Information Network

(O*NET) to support her contention that the civil engineering occupation requires "at minimum a bachelor's degree."

Counsel for the petitioner also submitted, *inter alia*, the following: (1) a print-out of the O*NET OnLine Summary Report for 17-2051.00 – Civil Engineers; (2) two job postings; (3) a print-out on Civil Engineers printed from the site <http://en.wikipedia.org> which according to the petitioner demonstrates that "civil engineering takes place on all level [sic] and that a bachelors [sic] degree is required for employment."

On December 14, 2011, the director denied the petition finding that the proffered position is not a specialty occupation.

On appeal, counsel for the petitioner contends again that the proffered position's proposed duties reflect the duties of a civil engineer and that the petitioner "has a need for a civil engineer in its motel establishment as its structures and buildings have to be sound, licensed, and up to par with city and state codes." Counsel further asserts that the civil engineering occupation "clearly has a minimum requirement of a Bachelor's degree or higher" and that the director erred in finding that the proffered position is not a specialty occupation.

To make its determination 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. As a preliminary matter, however, the AAO disagrees with the petitioner's claim that the proffered position is that of a civil engineer. According to the *Handbook*, "[c]ivil engineers design and supervise large construction projects, including roads, buildings, airports, tunnels, dams, bridges, and systems for water supply and sewage treatment." U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Civil Engineers," <http://www.bls.gov/ooh/architecture-and-engineering/civil-engineers.htm#tab-2> (last visited Jan. 2, 2013).

(b)(6)

The petitioner has failed to submit any corroborating evidence demonstrating that the beneficiary will be designing and supervising large construction projects, including roads, buildings, airports, tunnels, dams, bridges, and systems for water supply and sewage treatment. Furthermore, the petitioner has failed to demonstrate that it has a need for such duties performed by civil engineers or that such duties would be reasonable in the context of its motel business. Given the lack of detail and corroborating evidence, the AAO cannot determine that the proffered position substantially reflects the duties of a civil engineer. 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 as understood within the context of its motel business operation, 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." 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 Jan. 2, 2013). 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 Jan. 2, 2013).

Because the *Handbook* indicates that working as a general maintenance worker 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 and for the reasons discussed below, the petitioner's reliance upon the job vacancy advertisements it submitted is misplaced.

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and an organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner and counsel to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. As previously mentioned, 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. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

- Chief Engineer for a [REDACTED] Hotel in Cedar Rapids, Iowa, requiring, *inter alia*, a "College Degree in Mechanical Engineering or equivalent" and a "minimum of 5 year(s) of experience" and a "minimum of 3-5 year(s) of supervisory experience"; and
- Director of Engineering – Hotel/Conference Center for [REDACTED] preferring a "[b]achelor's degree in Engineering" and requiring, *inter alia*, "Five (5) years responsibility at a director level or ten (10) years engineering, maintenance and construction experience . . ."

The first advertisement states that it requires a "College Degree in Mechanical Engineering or equivalent" which is in contrast to the petitioner's stated requirement of a bachelor's degree in civil engineering. It is not readily apparent that a degree in mechanical engineering is closely related to civil engineering and its general duties and responsibilities such that the advertisement could be found to be a parallel position. Furthermore, the advertised position is for an experienced engineer and supervisor whereas the proffered position is an entry level position for an employee who has only basic understanding of the occupation, as indicated on the LCA wherein the petitioner designated the proffered position as a Level I industrial engineer position. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. As such, the record lacks sufficient evidence demonstrating that the advertised position is a parallel position.

The second advertisement states that it *prefers* a "[b]achelor's degree in Engineering." Furthermore, the advertising employer states that it "provides facilities management services to over 500 hospitals, colleges, schools, and businesses through the US and Canada" with annual sales exceeding \$600 million. Thus, it too, cannot be found to be a parallel position in a similar organization.

Upon review of the documents, the AAO finds that the submitted job advertisements do not establish that a requirement for a bachelor's degree in a specific specialty is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.¹ 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.²

¹ As the documentation does not establish that the petitioner has met this prong of the regulations, the AAO finds that a complete analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.

² 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 two job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar motels. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no

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.

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 positions. Moreover, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than other positions in its field that can be performed by persons without a specialty degree or its equivalent, particularly in parallel positions in organizations similar to the petitioner.

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

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 chief engineer positions for motels similar to the petitioner 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 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.

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 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 will also address an additional, independent ground for denial of the petition, not identified by the director's decision, that the AAO finds also precludes approval of this petition. Specifically, beyond the decision of the director, the AAO finds that the petitioner failed to submit an LCA that corresponds to the petition. On the LCA, the petitioner specified that the occupational classification for the proffered position falls under "INDUSTRIAL ENGINEERS" and listed the SOC (O*NET/OES) Code as 17-2112.00. The petitioner, however, has failed to demonstrate that the proffered position's duties are reflected by the duties performed by industrial engineers. In addition, although the petitioner claims elsewhere that the proffered position is a civil engineer position, and not that of an industrial engineer, the AAO found that the position as described is more akin to a general maintenance and repair worker. The AAO notes that by completing and submitting the LCA, and by signing the LCA, the petitioner attested that the information contained in the LCA was true and accurate.

While the Department of Labor (DOL) is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a certified LCA that corresponds to the claimed duties of the proffered position, a general maintenance and repair worker, and the appeal must be dismissed and the petition denied for this additional reason.

Furthermore, even if the proffered position was found to be a civil engineering position, as repeatedly claimed by the petitioner and counsel elsewhere in the petition, the appeal must be

dismissed and the petition denied for the petitioner's failure to submit an LCA that corresponds to that occupation. In the petitioner's submissions to USCIS and the AAO, the petitioner repeatedly asserts that the duties of the proffered position's duties are akin to those of a civil engineer for which the SOC (O*NET/OES) Code is 17-2051.00.³ The assertion that the occupational category for the proffered position is "civil engineer" is contradicted by the occupational classification selected by the petitioner for the LCA submitted initially in support of the petition.

The regulations at 8 C.F.R. § 214.2(h)(2)(i)(E) state in pertinent part:

The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition.

While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E). Thus, the petitioner's claim in its response to the director's RFE and in its appeal that the position is now a civil engineering position requires that a new petition be filed with USCIS to reflect this change. Therefore, the petitioner's request that the AAO adjudicate its appeal for a different occupational classification must, therefore, be rejected.

The AAO turns next to the issue of the beneficiary's qualifications. Beyond the decision of the director, even if the petitioner had demonstrated that the proffered position was in fact a civil engineer position, there is no evidence that the beneficiary is licensed to perform the duties of a civil engineer or is either exempt or not required to have a license to fully perform the duties of a civil engineer in Connecticut. The petitioner must therefore be denied for this additional reason.

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 (9th 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).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings,

³ It is noted that had the petitioner provided the occupational classification for civil engineers in the LCA, it would have been required to pay a significantly higher prevailing wage to the beneficiary.

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

ORDER: The appeal will be dismissed. The petition will be denied.