State of Connecticut
Commission on Human Rights and Opportunities
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MEMORANDUM

To: All Counsel

From: Kimberly D. Morris, Secretary II, OPH

Re: CHRO ex rel. David Taylor v. Sate of CT, Department of Consumer Protection, CHRO No. 0910275

Date: October 9, 2018

Enclosed is the Presiding Human Rights Referee's Ruling and Order on Respondent's Motion to Dismiss.

cc.

Presiding Human Rights Referee Elissa T. Wright
Michelle Dumas-Keuler, Esq. – via email only
Colleen Valentine, Esq. – via email only
David Taylor – via email and certified mail no. 7015 0640 0007 6546 9192

STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities, ex rel. David Taylor, Complainant

CHRO No. 0910275

V.

Connecticut Department of Consumer Protection, Respondent

October 9, 2018

RULING AND ORDER ON MOTION TO DISMISS AND SUA SPONTE ORDER DISMISSING CERTAIN ALLEGATIONS FROM THE COMPLAINT FOR FAILURE TO STATE A CLAIM

I

PRELIMINARY STATEMENT

The complainant [1] filed an affidavit of illegal discriminatory practice with the Commission on Human Rights and Opportunities (commission) on January 14, 2009, and an amended complaint on March 31, 2010. On October 20, 2011, the matter was certified to public hearing. The complaint alleges a cause of action under General Statutes §§ 46a-80, [2] 46a-71, [3] 46a-73, [4] and 46a-58 (a) [5] for discrimination, on the basis of complainant's national origin (English) and his criminal conviction, in the denial by the respondent of the complainant's application for a license as a professional engineer under Class 4 reciprocity. The complaint also alleges that the respondent did not, as an alternative, consider granting the complainant a professional engineering license under a different class. The amended complaint adds General Statutes § 46a-74 [6] to the list of statutes that were allegedly violated. On March 8, 2010, Human Rights Referee Michele Mount was appointed presiding referee. On March 28, 2012, the respondent filed an answer and asserted affirmative defenses to the complaint and the amended complaint. On April 5, 2012, the complainant filed responses to the respondent's answer. The action proceeded to be actively litigated with the filing of motions and with discovery and production being undertaken. On June 4, 2012, the respondent filed a motion to dismiss or in the alternative to decertify. On July 17, 2012, the motion to dismiss or to decertify was denied by Referee Mount. The respondent's second and seventh affirmative defenses, as well as the complainant's and commission's objections to the motion, were stricken from the record. In that ruling, Michele Mount recused herself from serving as presiding referee in further proceedings. On July 31, 2012, the matter was reassigned to Human Rights Referee Alvin R. Wilson, Jr. On January 8, 2013, the commission deferred prosecution of the complaint to the complainant pursuant to § 46a-84 (d) of the General Statutes. On October 22, 2013, the respondent filed a motion to dismiss the complaint on the ground that the Office of Public Hearings is deprived of subject matter jurisdiction over the complaint because there is no practical relief that can be granted by this tribunal and the claimed controversy is not justiciable. On October 25, 2013, the complainant filed an objection to the motion to dismiss. On November 20, 2013, the commission filed an objection to the motion and a memorandum of law in support of the objection. In due course, following the resignation of Chief Human Rights Referee Wilson, the matter was reassigned to the undersigned on June 27, 2016. A status conference was held on June 15, 2017, via telephone, in which all parties participated. At the status conference the parties stated that there was no change in the respective bases for

the respondent's motion and for the commission's and the complainant's objections. The tribunal decides the matter on the papers submitted and without oral argument.

Currently pending before the tribunal is the motion to dismiss the complaint filed by the respondent on October 22, 2013. The dispositive issue raised by the respondent with the motion to dismiss is whether the questions presented in the complaint are justiciable. For the reasons discussed below, the tribunal grants the motion to dismiss in part; denies the motion to dismiss in part; and sua sponte dismisses (strikes) certain allegations from the complaint for failure state a claim for which relief can be granted.

II

THE COMPLAINT AND AMENDED COMPLAINT

The relevant factual allegations in the complaint and amended complaint are as follows. On May 9, 2008, while incarcerated in MacDougall-Walker Correctional Institution, [7] the complainant, a British citizen with twenty-five years of engineering experience in Great Britain, applied to the respondent Department of Consumer Protection for a license as a professional engineer in Connecticut under Class 4 reciprocity. On November 28, 2008, the complainant telephoned the respondent to ask for an update regarding his application and was told that it had been denied on November 18, 2008. On December 30, 2008, the complainant received a detailed letter from the respondent, dated December 18, 2008, which stated the objective reasons for the denial of his application. The letter stated that the denial was based on a determination by the Board of Examiners for Professional Engineers and Land Surveyors within the respondent agency that the complainant failed to meet the minimum criteria for the Class 4 licensure, as required under § 20.300.3 (4) of the Regulations of Connecticut State Agencies, [8] because he failed to provide evidence (a) that he holds a basic engineering degree, and (b) that he had successfully passed the National Council of Examiners for Engineering and Surveying (NCEES) examinations, which consist of the Fundamentals of Engineering exam and the Principles and Practice of Engineering exam. The letter of denial also indicated that the decision was based in part on General Statutes § 46a-80, which, at subsection (c), permits an agency to reject a license application because of the applicant's prior criminal conviction if, after considering certain enumerated factors, the applicant is determined to be unsuitable for, e.g., the specific profession for which the license is sought. The respondent's letter of denial referenced the nature of the complainant's crime and the time elapsed since his release from prison, two of the factors to be considered under § 46a-80 (c) in determining the suitability of an applicant, who has been convicted of a crime.[9]

In his complaint, the complainant alleges that the respondent, for discriminatory reasons based on his national origin and his criminal conviction, denied his application for a professional engineering license under Class 4. Included within the charge of criminal-record discrimination is a claim that the respondent failed to provide a written statement of the evidence presented and the reasons for the rejection, as required under General Statutes § 46a-80 (d), if prior conviction of a crime is used as a basis for rejection of an applicant. The claimant also alleges that the respondent, for discriminatory reasons based on his protected status as a British citizen, having denied his Class 4 application, failed to exercise its discretionary powers and to consider his application instead under either Class 2 or Class 3. Subsumed within the latter allegation the complainant states that he is willing to sit for the NCEES examinations (Part I and/or Part II), if necessary.

By way of relief, the complainant appears to seek an order against the respondent requiring it to (a) consider his application under a different class, either Class 2 or Class 3; (b) allow him to take the NCEES examinations, Part I

and/or Part II, while he is in custody in prison; and (c) provide a detailed explanation of the reasons for the denial of his application on the basis of his criminal conviction as required under General Statutes § 46a-80 (d).

III

ANALYSIS AND CONCLUSIONS

Legal Standard

"A motion to dismiss ... properly attacks the jurisdiction of the courts, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court ..." (Internal quotation marks omitted.) *Caruso v. Bridgeport,* 285 Conn 608, 627 (2008); *Gurliacci v. Mayer,* 218 Conn. 531, 544-45 (1991). Section 44a-54-88a (d) (1) of the Regulations of Connecticut State Agencies [10] authorizes the presiding referee to dismiss a complaint for, among other reasons, lack of subject matter jurisdiction.

The moving party bears a substantial burden to sustain a motion to dismiss. "A motion to dismiss admits all facts well-pleaded and invokes any record that accompanies the motion, including supporting affidavits that contain undisputed facts." (Citation omitted.) *Malasky v. Metal Products Corp.*, 44 Conn. App. 446, 451-52 (1997), cert. denied, 241 Conn. 906 (1997). The complainant's allegations and evidence must be accepted as true and interpreted in a light most favorable to the complainant; every reasonable inference is to be drawn in his favor. *Conboy v. State,* 292 Conn. 642, 651 (2009); *May v. Coffey,* 291 Conn. 106, 108–09 (2009); *New England Savings Bank v. Bedford Realty Corp.*, 246 Conn. 594, 608 (1998); *Forest Manor LLC v. Travelers C & S Co. of America,* Superior Court, Judicial district of Waterbury, Docket No X06YWYCV156029923S (June 6, 2017) (2017 WL 3011688); *Banks v. Civil Service Commission*, 2006 WL 2965501, 1, OPH/WBR 2006-017 (Ruling on motion to dismiss, March 21, 2006). In evaluating the motion, every presumption in favor of subject matter jurisdiction should be indulged. *Kelly v. Albertsen*, 114 Conn. App. 600, 606 (2009); *Williams v. Commission on Human Rights & Opportunities*, 257 Conn. 258, 266 (2001); *Amodio v. Amodio,* 247 Conn. 724, 728 (1999).

Justiciability

The respondent challenges the subject matter jurisdiction of the tribunal on the ground that there is no practical relief that can be granted that would resolve the dispute, and the claim therefore presents a moot question, depriving the tribunal of jurisdiction to adjudicate the matter. In determining whether the complainant is entitled to administrative adjudication of the allegations in the complaint, the tribunal makes no determination regarding the merits. *Milford Power Co., LLC v. Alston Power, Inc.*, 263 Conn. 616, 626 (2003). Rather, I consider whether adjudication and determination of the controversy is capable of resulting in practical relief to the complainant at this time. Id.

These proceedings were instituted by the Commission on Human Rights and Opportunities pursuant to General Statutes §§ 46a-80, 46a-71, 46a-73, 46a-74, and 46a-58 (a), upon the complaint of the complainant alleging that the respondent discriminated against him in the denial of his application for a license as a professional engineer on the grounds of his national origin and his criminal record, and in the respondent's failure to consider his application under alternate categories. Upon a finding of reasonable cause for believing that unlawful discrimination occurred as alleged in the complaint, as amended, in accordance with General Statutes § 46a-83 (e), subsections (a) and (b) of General Statutes § 46a-84, and § 46a-54-78a of the Regulations of Connecticut State Agencies, the complaint was certified on October 20, 2011, to the Office of Public Hearings as a contested

case within the meaning of the Uniform Administrative Procedures Act (UAPA), General Statutes § 4-166 et seq. As such, the process is governed by the UAPA, by General Statutes §§ 46a-84, 46a-85, and 46a-86, and by §§ 46a-54-78a through 46a-54-98a of the Regulations of Connecticut State Agencies. The certified complaint falls within the general class of cases over which the Office of Public Hearings is authorized by the legislature to exercise jurisdiction.

But that is not the end of the inquiry. Even if the charge falls within the general class of complaints which the tribunal is statutorily authorized to hear and determine, that does not necessarily mean that the claimed controversy is justiciable. There must be a justiciable case or controversy for a court to exercise its authority to hear and decide a claim. *Chapman Lumber, Inc. v. Tager*, 288 Conn. 69, 86 (2008); *Board of Education v. Naugatuck*, 257 Conn. 409, 416 (2001); *State v. Nardini*, 187 Conn. 109, 111-12 ((1982). "A court may have subject matter jurisdiction over certain types of controversies in general, but may not have jurisdiction in a given case because the issue is not justiciable." *Statewide Grievance Committee v. Burton,* 282 Conn. 1, 7 (2007).

Justiciability is a threshold question of jurisdiction. *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell,* 295 Conn. 240, 254 (2010); *Milford Power Co., LLC v. Alstom Power, Inc.,* 263 Conn. 616, 624 (2003); *Santos v. Morrissey*, 127 Conn. App. 602, 605 (2011). "Justiciability involves the authority of the court to resolve *actual* controversies.... Because courts are established to resolve actual controversies, before a claimed controversy is entitled to a resolution on the merits it must be justiciable." (Citations omitted; internal quotation marks omitted; emphasis in original.) *Statewide Grievance Committee v. Burton,* supra, 282 Conn. 7; *Milford Power Co., LLC v. Alstom Power, Inc.,* supra, 263 Conn. 624; *Santos v. Morrissey*, supra; *Shenkman–Tyler v. Central Mutual Ins. Co.,* 126 Conn. App. 733, 738–39 (2011); *Tavani v. Riley*, 160 Conn. App. 669, 676 (2015). "A case that is nonjusticiable must be dismissed for lack of subject matter jurisdiction." *Santos v. Morrissey*, supra.

"Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute ... (2) that the interests of the parties be adverse ... (3) that the matter in controversy be capable of being adjudicated by judicial power ... and (4) that the determination of the controversy will result in practical relief to the complainant ...."(Citations omitted; internal quotation marks omitted.) *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell,* supra, 295 Conn. 254; *Shenkman–Tyler v. Central Mutual Ins. Co.,* supra, 126 Conn. App. 738–39; *Commission on Human Rights & Opportunities ex rel. Morales v. Trinity College*, 2013 WL 338063, *3, CHRO No. 1110163 (February 4, 2013) (Ruling on motion to dismiss). "[J]usticiability comprises several related doctrines, namely, standing, ripeness, mootness and the political question doctrine, that implicate a court's subject matter jurisdiction and its competency to adjudicate a particular matter." *Janulawicz v. Commissioner of Correction*, 310 Conn. 265, 270 (2013); *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell,* supra; *Chapman Lumber, Inc. v. Tager*, supra, 288 Conn. 86; *Office of the Governor v. Select Committee of Inquiry,* 271 Conn. 540, 569 (2004); *Tavani v. Riley*, supra, 160 Conn. App. 676. The term "justiciability" thus is used to include the doctrines determining at which stage, and by whom, a dispute may be brought before the courts. See *Loisel v. Rowe*, 233 Conn. 370, 378-379 (1995). "All of the justiciability doctrines – standing, ripeness, and mootness – stem in part from a desire to allow the other branches of government to engage in their normal process of lawmaking before invoking the judicial power to stop such efforts in their tracks." *United States v. Lay*, 237 F. 3d 251, 260 (3d Cir. 2001), cited with approval in *Milford Power Co., LLC v. Alstom Power, Inc.,* supra, 263 Conn. 623.

Here, the respondent's justiciability argument focuses on the doctrine of mootness as an element of justiciability. In its early meaning, the term "moot" was used to refer "to a broad spectrum of cases in which there was not at the time a bona fide controversy pending, *either because one had not yet arisen, or as we think*

of it today, because one had arisen and later gone away." (Emphasis added; internal quotation marks omitted.) Matthew I. Hall, "The Partially Prudential Doctrine of Mootness," 77 Geo. Wash. L. Rev. 562, p. 568 (2009). In this early sense, "[a] 'moot' case is one which seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has been actually asserted and contested, or a judgment upon some matter which, when rendered, for any reason, cannot have any practical legal effect upon a then existing controversy." (Internal quotation marks omitted.) *Ex parte Steele*, 162 F.694, 696 (N.D. Alabama 1908); see also *Allen v. State of Georgia*, 166 U.S. 138, 140 (1897) ("...we have repeatedly held that we would not hear and determine moot cases, or cases in which there was not at the time a bona fide controversy pending.) The respondent's argument considers mootness in the broader sense of its earlier meaning as implicating the tribunal's jurisdiction to entertain an action from which no practical benefit could follow because there is no controversy pending.

Under our current jurisprudence, the separate doctrines of mootness and ripeness have diverged. Both doctrines consider whether judicial intervention is timely. See *Loisel v. Rowe,* supra, 233 Conn. 378. The doctrine of mootness is invoked when there was once a concrete and justiciable claim, but because of changed circumstances, there is no longer any relief that can be granted. Id.; *Santos v. Morrissey*, supra, 127 Conn. App. 605. The doctrine of ripeness is, in a sense, the opposite of mootness. A jurisdictional challenge on the basis of ripeness challenges an action that has not yet occurred and is not certain to occur. *Milford Power Co., LLC v. Alstom Power, Inc.,* supra, 263 Conn. 623-24 (2003). The basic rationale of both doctrines, as elements of justiciability, is the absence of a concrete injury that is capable of being resolved through judicial involvement. See *Loisel v. Rowe*, supra; *Reynolds v. Vroom*, 130 Conn. 512, 515 (1944). The essence of the respondent's justiciability challenge is that the claimed controversy is not ripe for adjudication because there is no practical relief the tribunal could provide since the relief sought involves matters that are committed to the discretion of the respondent agency and which have not been acted upon or formalized by the agency.

In the administrative law setting, "Ripeness principles are often invoked as part of the process of establishing the proper relationships between administrative action and judicial review." 13B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, Administrative Review § 3532.6 (3d ed.). In addressing the question of ripeness in judicial review of administrative action in *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967), Justice Harlan observed: "Without undertaking to survey the intricacies of the ripeness doctrine it is fair to say that its basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967); *Chapman Lumber, Inc. v. Tager*, supra, 288 Conn. 86-87 (Accord). "[R]ipeness is a sine qua non of justiciability ...." (Citation omitted; internal quotation marks omitted.) *Milford Power Co., LLC v. Alstom Power, Inc.,* supra, 263 Conn. 616, 626 (2003); *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 144 (2002); *Fleming v. City of Middletown*, Superior Court, judicial district of Middlesex at Middletown, Docket No. MMXCV 175009320S (January 12, 2018) (2018 WL 709975, *7.

"Prudential ripeness is a tool that courts may use to enhance the accuracy of their decisions and to avoid becoming embroiled in adjudications that may later turn out to be unnecessary ...." *Simmonds v. I.N.S.*, 326 F. 3d 357 (2d Cir. 2003). "When a court declares that a case is not prudentially ripe, it means that the case will be *better* decided later .... " Id., 357; [11] accord *National Organization for Marriage, Inc. v. Walsh,* 714 F. 3d 682, 687-88 (2d Cir. 2013). "Standing and ripeness are closely related doctrines that overlap most notably in the shared requirement that the plaintiff's injury be imminent rather than conjectural or hypothetical. *New York Civil*

Liberties Union v. Grandeau, 528 F.3d 122, 130 n. 8 (2d Cir.2008)."(Internal quotation marks omitted.) *Simmonds v. I.N.S.*, supra; *Ross v. Bank of America, N.A. (USA),* 524 F.3d 217, 226 (2d Cir.2008). [12]

With these principles in mind, I examine whether there is any practical relief that the tribunal could provide from a determination on the merits of the claims sought to be raised by the complainant. There must be a real and substantial controversy that is capable of being resolved through a decision of this tribunal in order for the complaint allegations to survive. The respondent argues that the tribunal lacks subject matter jurisdiction over the entirety of the complaint. For the reasons set forth below, I conclude that a portion of the complaint is not ripe for adjudication. I will address the allegations separately.

The Alleged Discrimination, Based on the Complainant's National Origin and His Criminal Conviction, in the Denial of the Complainant's Application for a Professional Engineering License under Class 4.

In his complaint affidavit, as amended, the complainant alleges that the respondent denied his application for licensure as a professional engineer under Class 4 for discriminatory reasons based on his national origin in violation of General Statutes §§ 46a-71, 46a-73, 46a-74, and 46a-58 (a). The complaint affidavit also alleges that the respondent, in rejecting the complainant's application on the basis of his criminal record, engaged in a discriminatory practice in violation of General Statutes § 46a-80. Embraced within this latter charge, the complainant seeks an order requiring the respondent to provide him with a written statement specifying the evidence presented and the reasons for the rejection of his application in part because of his conviction of a crime, as required under subsection (d) of § 46a-80.

As a threshold matter, claims of discriminatory practices pursuant to General Statutes §§ 46a-71, 46a-73, 46a-74, 46a-58 (a), and subsection (a) of General Statutes § 46a-80 are each respectively and by statutory definition a "discriminatory practice." General Statutes § 46a-51 (8). [13] Claims of discriminatory practices pursuant to subsections (b) through (d) of § 46a-80 are not included within the statutory definition of "discriminatory practice."

Applying principles of the doctrine of justiciability to the specific claims of discrimination in the respondent's denial of the complainant's license application on the bases of his national origin and his criminal record, I conclude that the denial was the culmination of agency action on the application, no further review was available within the agency, the agency action was final, and the complainant was aggrieved by the discriminatory practices alleged. The allegations of national-origin-based discrimination and criminal-record-based discrimination in the denial of the complainant's application for a Class 4 professional engineering license are ripe for review and present concrete and justiciable claims, which the tribunal has jurisdiction to adjudicate administratively. Accordingly, the respondent's motion to dismiss the complaint is **DENIED** as to the specific allegations of discrimination in the denial of the complainant's application for a professional engineering license under Class 4 reciprocity on the basis of his national origin and of his criminal record.

Nevertheless, for reasons set forth below, the specific charges alleging a discriminatory practice in the denial of complainant's application for a Class 4 professional engineering license based on his national origin in violation of General Statutes §§ 46a-71, 46a-73, and 46a-74, and on his criminal record in violation of subsection (a) of § 46a-80, are insufficient, as a matter of law, to state a claim for which relief can be granted. The tribunal therefore sua sponte dismisses such charges pursuant to § 46a-54-88a (d) (2) of the Regulations of Connecticut State Agencies ("The presiding officer may, on his or her own or upon motion of a party, dismiss a complaint or a

portion thereof if the complainant or the commission ... [f]ails to state a claim for which relief can be granted.")
[14]

The legal standard on consideration of the legal sufficiency of a complaint to state a claim upon which relief can be granted is a familiar one. The sufficiency of the allegations of any complaint to state a legally cognizable claim is tested by the facts provable under the allegations of the pleading being challenged. *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 498 (2003); *Poach v. Doctor's Associates, Inc.*, Superior Court, judicial district of New Haven, Docket No. CV 0740233906S (September 22, 2008) (2008 WL 4634559, *1-2); *Commission on Human Rights & Opportunities ex rel. Perri v. Peluso*, 2008 WL 323662, CHRO No. 0750113 (January 11, 2008). In determining the legal sufficiency of the complaint, all well-pleaded facts, and those facts necessarily implied from the allegations, are deemed to be admitted and they must be construed most favorably to the complainant. *Violano* v. *Fernandez*, 280 Conn. 310, 318 (2006); *Murillo v. Seymour Ambulance Assn., Inc.*, 264 Conn. 474, 476 (2003); *Faulkner v. United Technologies Corp.*, 240 Conn. 576, 580 (1997). If any facts alleged in the complaint would support a cause of action, the complaint is not vulnerable to be stricken (dismissed). *Sullivan v. Lake Compounce Theme Park, Inc.*, 277 Conn. 113, 117-18 (2006); *Bouchard* v. *People's Bank,* 219 Conn. 465, 471-472 (1991). Conversely, if the complainant alleges mere conclusory statements without supporting facts, the complaint may be stricken (dismissed). *Fort Trumbull v. Alves*, supra, 262 Conn. 498; *Melfi v. Danbury*, 70 Conn. App. 679, 686, cert. denied, 261 Conn. 922 (2002). The latter appears to be the case here. I will address the legal sufficiency of the allegations of national-origin discrimination and of criminal-records discrimination to state a cause of action separately.

A

The complaint fails to allege a minimally sufficient factual basis to establish a prima facie case of discrimination on the grounds of the complainant's national origin.

Under Connecticut law, it is a discriminatory practice for any state department, board, or agency to grant, deny, or revoke the license or charter of any person based upon, inter alia, national origin. General Statutes § 46a-73 (a). In the present matter, the complainant alleges disparate treatment in the respondent's discriminatory denial of his Class 4 application for a professional engineering license application on the basis of his national origin in violation of the statute.

"When a [complainant] alleges disparate treatment, liability depends on whether the protected trait ... actually motivated the employer's decision ... That is, the [complainant's protected trait] must have actually played a role in [the employer's decision making] process and [have] had a determinative influence on the outcome ..." (Citation omitted; internal quotation marks omitted.) *Board of Education v. Commission on Human Rights & Opportunities,* 266 Conn. 492, 505, 832 A.2d 660 (2003). The principal inquiry of a disparate treatment case is whether the plaintiff was subjected to different treatment because of his or her protected status. *Levy v. Commission on Human Rights & Opportunities,* supra, 236 Conn. 107-08.

"The prima facie case serves an important function in the litigation: it eliminates the most common nondiscriminatory reasons for the plaintiff's rejection." *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253-54 (1981). The complainant bears the initial burden of alleging a sufficient factual basis for establishing a prima facie case of discrimination, giving rise to an inference of unlawful discrimination based on his protected status. *Heyward v. Judicial Department*, 178 Conn. App. 757, 766-69 (2017); *Amato v. Hearst Corp.*, 149 Conn. App. 774, 777-78 (2014).

In *McDonnell Douglas Corporation v. Green,* 411 U.S. 792 (1973), the United States Supreme Court set forth the basic allocation of burdens and order of presentation of proof of intentional discrimination through circumstantial evidence in cases involving claims of employment discrimination. The complainant bears the initial burden of establishing a prima facie case of discrimination by showing, for example in a hiring case, that: (1) he is a member of a protected group; (2) he was qualified for the position; (3) he suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances giving rise to a presumption of discrimination. [15] *Feliciano v. AutoZone, Inc.,* 316 Conn. 65, 73-74 (2015); *Jackson v. Water Pollution Control Authority,* 278 Conn. 692, 705 (2006). After the complainant makes out a prima facie case of discrimination, the burden of production shifts to the respondent to rebut the presumption of discrimination by articulating a legitimate, nondiscriminatory reason for the action. *Jackson v. Water Pollution Control Authority,* supra. The complainant must then establish by a preponderance of the evidence that the respondent's reason was a pretext for discrimination. Id.

The present disparate treatment claim, alleging that the respondent engaged in a discriminatory state-licensing practice based on the complainant's national origin in violation of General Statutes § 46a-73 (a) derives it color from disparate treatment claims brought under other laws prohibiting, e.g. discriminatory employment practices, discriminatory housing practices, and other discriminatory practices specifically prohibited in Title 46a, Human Rights Chapter 814c Part II classified in the heading of Discriminatory Practices. My research has not disclosed any case involving the analytical framework to be used to evaluate a claim alleging a discriminatory practice in the denial of a state-required license in violation General Statutes § 46a-73 (a). However, I see no basis for not extending the *McDonnell Douglas* analysis to the present claim alleging disparate treatment in the denial of a license to practice the profession of engineering under the statute. [16] Tailoring the *McDonnell Douglas* prima facie requirements to the present matter, in order for the complainant to prevail on his claim that the respondent violated General Statutes § 46a-73 (a) in the denial of his application for professional engineering licensure because of his national origin, he first must establish that (1) he was a member of a protected class; (2) he was qualified for the license; (3) he suffered an adverse action; and (4) the adverse action occurred under circumstances giving rise to a presumption of discrimination.

The *McDonnell Douglas* prima facie analysis is equally applicable to the complainant's claim of unlawful discrimination under General Statutes § 46a-71 (a), in which the burden is on the complainant to establish he was discriminated against on the basis of his protected status. *Cameron v. Alander,* 39 Conn. App. 216, 222 (1995), cert. denied 235 Conn. 924 (1995). Only after the complainant makes a prima facie case of discrimination under § 46a-71 (a), does the burden shift to the respondent to articulate a legitimate nondiscriminatory justification for the action. Id.

If, under the allegations of the complaint, including all well-pleaded facts and those facts necessarily implied from the allegations, the complainant cannot establish the necessary prima facie elements to state a legally cognizable claim, the pleading may be stricken (dismissed for failure to state a claim for which relief can be granted). *Coe v. Board of Education,* 301 Conn. 112, 117 (2011); *Sturm v. Harb Development, LLC,* 298 Conn. 124, 130 (2010); *Heyward v. Judicial Department,* supra, 178 Conn. App. 766-69; *Amato v. Hearst Corp.,* supra, 149 Conn. App. 777-78.

"Factual allegations must be enough to raise a right to relief above the speculative level ... "(Citations omitted.) *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007); see also *Todd v. Exxon Corp.,* 275 F.3d 191, 198 (2d Cir.2001); *Journal Publishing Co., Inc. v. The Hartford Courant Co.,* Superior Court, judicial district of

Waterbury, Docket No. X10UWYCV136019412 (November 26, 2013) (2013 WL 7834299, *4). In deciding whether to dismiss a complaint for failure to state a claim, "[i]t is ... improper ... to assume that the [plaintiff] can prove facts that it has not alleged .... (Internal quotation marks omitted.) *Furlong v. Long Island College Hospital,* 710 F.2d 922, 927 (2d Cir.1983). Conclusory allegations cannot "substitute for minimally sufficient factual allegations." *Journal Publishing Co., Inc. v. The Hartford Courant Co.*, supra. If the complaint alleges mere conclusions of law that are unsupported by the facts alleged, it may be stricken. *Novametrix Medical Systems, Inc., v. BOC Group, Inc.,* 224 Conn. 210, 215 (1992); *Fort Trumbull v. Alves*, supra, 262 Conn. 498; *Mercer v. Champion*, 139 Conn. App. 216, 229, 237 (2012).

The complainant applied for a Class 4 professional engineering license based on his British qualifications and engineering experience, as alleged in the complaint. On the standardized affidavit-of-illegal-discriminatory-practice form, the complainant alleged that he was "denied licensure on or about 11/18/08 or consideration under different class (PE)" and that his national origin and prior criminal record were factors in the respondent's action (Complaint affidavit). However, aside from these conclusory allegations, the complainant fails to plead any facts sufficient to establish a legally cognizable claim of discriminatory practices under our state anti-discrimination statutes.

The complainant nowhere alleges that he satisfied the objective criteria for licensure under Class 4 and therefore was qualified for the professional engineering license he applied for, a necessary element of his prima facie case. Under objective standards for the respondent agency to grant a professional engineering license to an applicant on the basis of reciprocity under Class 4, the credentials required of an applicant can be no lower than the requirements for licensure of professional engineers in Connecticut. Regs., Conn. State Agencies § 20-300-3 (4). The minimum requirements for licensure as a professional engineer in Connecticut under General Statutes § 20-302 (1) [17] and § 20-300-3 (1) of the Regulations of Connecticut State Agencies [18] in turn include: (1) graduation from an approved course of engineering in a school or college of satisfactory standing; (2) an additional four years of active practice in engineering work; and (3) the successful passing of a written or written and oral examination approved by the commissioner of Department of Consumer Protection and the State Board of Examiners for Professional Engineers and Land Surveyors in the department. [19] Thus, in order to qualify for a professional engineering license under Class 4, the complainant would need to demonstrate to the licensing board in the respondent agency that he satisfies the minimum requirements to obtain a professional license in Connecticut, including that he holds an engineering degree from an institution of satisfactory standing and that he has successfully passed the licensing examinations administered by the NCEES.

The complaint fails, however, to include any factual predicate for the conclusory allegation that the respondent's action in denying the application occurred under circumstances giving rise to an inference of discrimination. There is no allegation that he had passed the requisite NCEES examinations, or that he holds a basic engineering degree, both necessary credentials to receive a Class 4 professional engineering license under the controlling statute and regulations. Aspects of the complaint itself are inconsistent with, and serve to undermine, any claim the complainant might have that he possessed the requisite qualifications to receive a Class 4 professional engineering license from the respondent. From the complainant's statement that he is willing to sit for Part I and/or Part II of the NCEES examinations, it can legally and logically be implied that he has not passed the required NCEES examinations, a material fact under the second prima facie element of his case. From the charge of discrimination in the respondent's failure to consider his Class 4 application under either Class 2 or Class 3, which apply only to applicants who are non-graduates, the material fact that the complainant lacks the required engineering degree also can be implied.

In sum, the allegation of unlawful national-origin-based discrimination by the respondent in the denial of the complainant's application for licensure as a professional engineer under Class 4 simply does not meet the basic prima facie criteria of viability under the *McDonnell Douglas* test. See *Heyward v. Judicial Department*, supra, 178 Conn. App. 766-69; *Amato v. Hearst Corp.*, supra, 149 Conn. App. 777-78. The complainant has not alleged a minimally sufficient factual basis to demonstrate an essential element of a prima facie case of discrimination in the respondent's denial of his Class 4 application to receive a state-required license to engage in engineering practice, namely that he had passed the requisite exams and possessed a degree in engineering as mandated by General Statutes § 20-302 (1).

Under the allegations of the complaint affidavit, including the facts pleaded and those facts necessarily implied from the allegations, there is no basis in law or fact for the complainant to establish an essential element of his prima facie case of national-origin-based discrimination under General Statutes §§ 46a-71 (a) and 46a-73 (a), namely that he was qualified by law to be granted a Class 4 professional engineering license at the time the respondent denied his application.

The allegation that the respondent engaged in a discriminatory licensing practice in violation of General Statutes § 46a-74 is similarly unavailing. Section 46a-74, through its incorporation of General Statutes § 46a-59, provides in relevant part that associations of licensed persons may not refuse to accept a person as a member because of the person's ... national origin ... General Statutes § 46a-59 (a). The prohibition applies to associations, boards, and other organizations with the principal purpose of furthering the professional or occupational interests of their members in occupations, professions, or trades requiring state licenses. The tribunal notes that the complainant does not allege that he ever was denied membership in an association, board, or other organization with the purpose of furthering a professional or occupational interest of his. After scrutiny of the complainant, the tribunal concludes that the complainant has not stated a cause of action under General Statutes § 46a-74.

Accordingly, the complainant fails to state a legally cognizable claim that the respondent, for discriminatory reasons based on the complainant's national origin, denied the complainant's Class 4 application for a professional engineering license in violation of General Statutes §§ 46a-71 (a) or 46a-73 (a) or 46a-74. The specific allegation of national-origin based discrimination in the respondent's denial of the complainant's application for a Class 4 professional engineering license in violation of General Statutes §§ 46a-71 (a), 46a-73 (a), and 46a-74 is **hereby DISMISSED sua sponte for failure to state a claim upon which relief can be granted** pursuant to § 46a-54-88a (d) (2) of the Regulations of Connecticut State Agencies. The complainant may, on or before November 23, 2018, file a revised complaint complying with this ruling and order. Failure to file a revised complaint may result in the dismissal of the subject allegation of the complaint.

B

The claim of criminal-record discrimination: The protections of the relevant statute do not apply to the complainant while he is incarcerated prior to the completion of his sentence.

The present case requires the tribunal to discern the meaning of General Statutes § 46a-80 and to ascertain whether the protections of the statute extend to criminal offenders, including the complainant, prior to their release from incarceration. [20] For the following reasons, I conclude that they do not.

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature.... In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question whether the language actually does apply... In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself ... If, after examining such text ..., the meaning of such text is plain and ambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) *Fedus v. Planning & Zoning Commission*, 278 Conn. 751, 756 (2006). Where there is ambiguity in the language of the statute, the tribunal must look to the legislative history of the statute for guidance as to the legislature's intent in enacting the statute. General Statutes § 1-2z; *Commission on Human Rights & Opportunities v. Truelove and MacClean, Inc.*, 238 Conn. 337, 348-49 (1996); *Bridgeport Hospital v. Commission on Human Rights & Opportunities*, 232 Conn. 91, 99 (1995); *Lageux v. Leonardi*, 148 Conn. App. 234, 239-41 (2014). "Identifying the societal problems which the legislature sought to address [is] particularly helpful in determining the true meaning of a statute." *Conway v. Wolton*, 238 Conn. 573, 666 (1966). The evidence from the legislative history is compelling.

General Statutes § 46a-80 (a) prohibits the state from disqualifying a person, on the basis of a prior criminal conviction, from employment or from practicing, pursuing, or engaging in any occupation, trade, vocation, profession, or business for which a state license, permit, certification, or registration is required. Under the law, a person within the class of persons protected by the statute generally is not disqualified from state employment solely because of a prior conviction of a crime. The law allows a state agency or board to deny employment or a credential only if it finds a person with a criminal record unsuitable after considering certain factors. The state can deny employment or a license, permit, certificate, or registration to a person with a prior criminal conviction if he or she is found unsuitable after considering (1) the nature of the crime, (2) *information relating to the degree of rehabilitation,* and (3) *the time elapsed since the conviction or release.* (Emphasis added.) General Statutes § 46a-80 (c).

If the legislature intended the statutory protections to apply to applicants, who are incarcerated, prior to their release from prison, then considerations of "the degree of rehabilitation of the convicted person" or "the time elapsed since the conviction or release" as among the factors enumerated in subsection (c) [21] regarding an applicant's suitability would appear to be superfluous. "[W]e presume that the legislature had a purpose for each sentence, clause or phrase in a legislative enactment, and that it did not intend to enact meaningless provisions." *Commission on Human Rights & Opportunities v. Truelove and MacClean, Inc.*, supra, 238 Conn. 347. When, as here, the meaning of a statute is not plain and unambiguous, we look to the legislative history for interpretive guidance. General Statutes § 1-2z; *Commission on Human Rights & Opportunities v. Truelove and MacClean, Inc.*, supra, 238 Conn. 348-49.

General Statutes § 46a-80 was enacted in 1973, and until 2014, had not been significantly amended. The bill that later became Number 73-347 of the 1973 Public Acts (P.A. 73-347), and was codified in § 46a-80, was House Bill No. 8758, 1973 Sess., *An Act Concerning Employment Discrimination against Persons with Criminal Records*, a committee bill drafted by the Human Rights and Opportunities Committee to address barriers to employment opportunities for ex-offenders and to give those who return to society from prison a fair chance at employment.

The legislative history of § 46a-80 confirms that the General Assembly intended that the statutory protections should be generally applicable to ex-offenders who had completed their sentence and returned to society. First, the statement of purpose in § 1 of P.A. 73-347, now codified as General Statutes § 46a-79, declares the affirmative public policy "... that the public is best protected when criminal offenders are *rehabilitated and*

returned to society prepared to take their places as productive citizens and that the ability of *returned offenders* to find meaningful employment is directly related to their normal functioning in the community. It is therefor the policy of this state to encourage all employers to give favorable consideration to providing jobs to qualified individuals, including those who may have criminal conviction records." (Emphasis added.)

Second, in introducing the bill, Senator Thomas G. Carruthers commented:

> "Through the removal of obstacles ... to the state employment, the *ex-offender* will be better able to secure meaningful and gainful employment. Since employment is a necessary ingredient to rehabilitation, society is made safer by *increasing job opportunities for ex-offenders*. Providing these persons with employment opportunities is not only added protection to society but also instills in the *ex-offender* the feeling that he is not forgotten and aids the taxpayers who pay heavily in welfare costs when persons who otherwise would be employed are unemployed. The statute would in no way affect the private sector of employment except through our licensing laws. Also we should be committed as a society to improving the plight of the *ex-offender* because it is the humanitarian and right thing to do. The enactment of committee bill 8758 as amended will be a necessary first step in this direction and eventual removal of unreasonable offender employment restriction in the State of Connecticut." (Emphasis added.) 16 S. Proc., Pt. 5, 1973 Sess., p. 2273, remarks of Senator Thomas G. Carruthers.

And third, the record of the public hearing on House Bill No. 8758 before the Human Rights and Opportunities Committee, held on March 13, 1973, is replete with references to the legislation's objective of removing impediments to employment opportunities of released, former offenders as essential to their rehabilitation and reintegration into society. Witnesses representing such organizations and agencies as the Commission on Human Rights and Opportunities, the American and Connecticut Bar Associations, local NAACP and Urban League chapters, and groups supporting prisoners testified in support of the bill's goal of removing employment barriers for ex-offenders to help with their rehabilitation. For example, James Hunt, representing the American Bar Association testified: "Employment opportunities for *released offenders* is essential to his rehabilitation efforts and his reintegration into society as a law abiding self-supporting citizen.... "If you are ... to give a *former offender* a break and a chance to redeem himself, you must give him the opportunity to pursue employment for which he is qualified.... The [gist of similar legislation in four other states] is that a *former offender* should not be excluded from consideration for employment simply because of the past offense.... [This] bill ... would help to expand job opportunities for *former offenders* in Connecticut." (Emphasis added.) Conn. Joint Standing Committee Hearings, Human Rights and Opportunities, 1973 Sess., pp 124-25.

At the hearing, Sanford Cloud, speaking on behalf of the Urban Leagues of Connecticut, noted that the statement of purpose in § 1 of the act expresses the state interest "in the plight of *exoffenders* and in the need to assist them in returning to society as productive citizens through expanding employment opportunities.... [including] employment opportunities by licensing boards of the state.... [T]he purpose of this bill is to *help all exoffenders, whether they are recently convicted or released or have been convicted and released some time ago.*" (Emphasis added.) Id., pp. 131-32. Michael Sheldon, a member of Citizens for Better Correctional Institutions, offered strong support for the legislation's commitment "to the complete and effective rehabilitation of criminal offenders and to the total reintegration of such persons into all constructive phases of social and economic life as quickly and efficiently as possible *following their release from state correctional institutions.*" (Emphasis added.) Id., p. 133. Louise Trubek, representing the Connecticut Bar Association, commended the bill's effort "in the goal of reintegration of the *ex-offenders* into the Connecticut employment

situation."(Emphasis added.) Id., p. 137. John Harrington, Director of Ebony Business, testified "If we are, in fact, going to try to help the offender become an exoffender and stay that way ... he should have the right to pursue any form of employment within reason that he feels himself qualified for." The legislation, he further said, would provide a better alternative for "many, many citizens who come back and find that they still have no place in the society as persons who are contributors to that society rather than takers from it." Id., p. 127.

In 2014, the General Assembly enacted Number 14-27 of the 2014 Public Acts (P.A. 14-27), providing certificates of rehabilitation in an effort to remove barriers to the ability of eligible offenders convicted of a crime to obtain employment, or a professional or vocational license. Number 14-27, § 6, of the 2014 Public Acts amended subsection (c) of the General Statutes § 46a-80 to provide that in making employment or credentialing decisions under the act, state agencies shall give consideration to a provisional pardon or certificate of rehabilitation issued to eligible offenders under the jurisdiction of the Board of Pardons and Paroles or the Court Support Services Division of the Judicial Branch. During the debate regarding P.A. 14-27, [22] Representative Gerald Fox stressed the legislation's underlying purpose of further expanding employment and professional licensure opportunities for persons with prior convictions of a crime [to obtain employment or licenses]. He said: "[W]e have heard over and over again that the greatest hurdle to individuals *when they either leave incarceration* or if they've been having trouble with the law is that they can't get a job and it would be the hope that this would be able to enable people to get a job and support themselves so that they can live a life that does not involve crime." 57 H.R. Proc., Pt. 14, 2014 Sess., p. 4483, remarks of Representative Gerald Fox. He later continued "... [T]he objective as I said earlier, is to find ways to get people back to work and it is the hope and it was the testimony from the Sentencing Commission." Id., p. 4491. Although the substantive changes to General Statutes § 46a-80 (c) enacted in 2014 have no effect on the present case, their legislative history further underscores the conclusion that the prohibition against criminal-records discrimination in state employment or professional licensure is intended to protect applicants for employment or licensure upon their reentry into society after release from prison. [23]

The legislative history is thus clear that the protections of the statute do not extend to persons convicted of a crime until after release from prison upon completion of their sentence of imprisonment, or in the case of certain eligible offenders until they have been released from prison under the supervision of the Board of Pardons and Paroles or the supervision of the Court Support Services Division of the Judicial Branch. In order to fall within the purview of General Statutes § 46a-80, the complainant must establish that he has completed his sentence of imprisonment and is no longer incarcerated. This he has not done.

The antidiscrimination provisions of General Statutes § 46a-80 (a) do not apply, and will not apply, to the complainant until he has completed his sentence and been released from prison. Not being a member of the relevant protected class, the protections of the antidiscrimination provisions of the statute do not apply to him and the complainant therefore cannot state a legally cognizable claim that he has been deprived of certain rights in violation of the statute. With regard to the allegation that the respondent discriminatorily denied the complainant's application because of his criminal conviction in violation of § 46a-80 (a), the complaint therefore fails to state a claim upon which relief can be granted. [24] Because the underlying claim of criminal-record discrimination is not viable, the respondent agency is not required to provide the complainant with a written statement specifically stating the evidence presented and the reasons for its rejection of the complainant's application pursuant to subsection (d) of the statute.

The complaint allegation of discrimination on the basis of the complainant's criminal conviction in violation of § 46a-80 (a) is **DISMISSED sua sponte for failure to state a claim upon which relief can be granted** pursuant to §

46a-54-88a (d) (2) of the Regulations of Connecticut State Agencies. The complainant may, on or before November 23, 2018, file a revised complaint complying with this ruling and order. Failure to file a revised complaint may result in the dismissal of the subject allegation of the complaint.

The Claim of Discrimination in the Respondent's Failure to Consider the Complainant's Class 4 Application for a License as a Professional Engineer under Class 2 or Class 3 is Not Ripe.

The other allegation of a discriminatory practice in state licensing stems from the failure of the respondent, having denied the complainant's application for a Class 4 license, to consider the complainant for licensure as a professional engineer under either Class 2 or Class 3 as an alternative.

In his complaint, by way of relief, the complainant seems to be seeking an order of the tribunal directing the respondent agency to consider the complainant's previous Class 4 license application under a different class, either Class 2 or Class 3. The complainant also appears to be seeking an order directing the respondent to allow him to sit for both parts of the NCEES examinations while he is in prison. The record does not, however, reflect any effort by the complainant either to submit an application to the respondent agency for licensure under Class 2 or Class 3, or to make arrangements to take the two-part NCEES examinations.

In the context of the present complaint, these are matters committed by statute and regulation to the discretion of the respondent agency. The regulatory statutes requiring licenses for the practice of professions, such as professional engineering, rest upon the sound policy of the protection of public health and safety, as well as the protection of the public against incompetence and fraud. *E.I.S., Inc. v. Board of Registration,* 200 Conn. 145, 149 (1986); *Rowley Engineering & Associates, P.C. v. Cuomo,* Superior Court, judicial district of New London, Docket No. 50 74 76 (January 2, 2991) (1991 WL 27286, *3); see also General Statutes § 20-299 (1),[25] which defines the profession, and § 20-302 (1), which contains the requirements for licensure. The respondent agency, and its individual licensing boards, have the specialized knowledge, skill, and experience to verify that applicants for a professional engineering license in Connecticut have the credentials, and have demonstrated the competencies, to sign and seal engineering plans and offer themselves to the public in order to protect the public health, safety, and welfare.

There is no indication in the record that the complainant has initiated the administrative processes for the agency to consider him for a Class 2 or a Class 3 professional engineering license or to arrange for the NCEES examinations to be administered to him while he is in prison under the custody and care of the Department of Corrections.

Unless and until the complainant applies to the respondent agency for a professional engineering license under a Class 2 or Class 3, and if necessary, provides the agency with evidence that he has obtained any credentials that he may be lacking – events which have not yet transpired and indeed may never transpire – any injury that the complainant may personally suffer from the failure of the respondent to consider his application under a different level, either Class 2 or Class 3, is speculative or hypothetical. *Chapman Lumber, Inc. v. Tager,* supra, 288 Conn. 86-87; *Cadle Co. v. D'Addario,* 111 Conn. App. 80, 82 (2008). It is well settled that courts are without jurisdiction to issue advisory opinions or to decide abstract, moot, or hypothetical questions disconnected from the granting of actual relief or from the determination of which no practical relief can follow. See *Loisel v. Rowe,* supra, 233 Conn. 378; see also *Echavarria v. National Grange Mutual Insurance* Co., 275 Conn. 408, 419-20 (2005).

The ripeness doctrine requires that the complainant first attempt to resolve his allegation that the respondent should have considered his application under Class 2 or Class 3 directly with the agency. Until the complainant has exhausted available administrative alternatives to obtain a Class 2 or Class 3 professional engineering license, and, if necessary, to take the required examinations, there is not yet, at least, any injury, or threatened injury to the complainant. A party should not attempt to circumvent agency regulations by seeking judicial intervention before exhausting available administrative remedies that may cause a dispute never to occur.

In sum, there is as yet no concrete controversy between the parties on the allegation of discrimination, under General Statutes §§ 46a-71 (a) or 46a-73 (a), in the failure of the respondent to consider the complainant's Class 4 license application under Classes 2 or 3. In the present context and timing, that portion of the complaint is not ripe under established justiciability doctrines. The availability of other means of redress available through the respondent agency for the particular right asserted counsels against the expenditure of resources of this tribunal hearing a portion of the complaint that cannot alter the affairs of the parties. The complainant might have a claim in the future, but he does not have one yet. [26]

Accepting as true the allegation of discrimination by the respondent agency in its failure to consider his Class 4 application under a different level, interpreting the allegation in a light most favorable to the complainant, and drawing every reasonable inference in the complainant's favor, there is no practical relief this tribunal can afford the complainant that would resolve this particular dispute should he prevail on his claim of unlawful discrimination in the respondent's failure to consider his application under Class 2 or Class 3. That portion of the claimed controversy presents a nonjusticiable question in the sense that it is unripe, ousting the tribunal of jurisdiction to hear and determine the matter.

The respondent's motion to dismiss is **GRANTED** as to the allegation of discrimination, in violation of General Statutes §§ 46a-71, 46a-73 , and 46a-74, on the basis of the complainant's national origin in the failure of the respondent to consider him for licensure as a professional engineer under a different level than the Class 4 level license that he had applied for.

IV

Order

After careful consideration, and for the foregoing reasons:

1. The complaint allegations of discrimination in the denial of the complainant's application for a professional engineering license under Class 4 on the basis of the his national origin and his criminal record present a justiciable question over which the tribunal has subject matter jurisdiction. As to these allegations, the respondent's motion to dismiss is **DENIED**.

2. The complainant allegation of discrimination in the denial of the complainant's application for a professional engineering license under Class 4 on the basis of the his national origin, in violation of General Statutes §§ 46a-71 (a), 46a-73 (a), and 46a-74, is **DISMISSED sua sponte for failure to state a claim upon which relief can be granted** pursuant to pursuant to § 46a-54-88a (d) (2) of the Regulations of Connecticut State Agencies. The complainant may, on or before November 23, 2018, file a revised complaint complying with this ruling and order. Failure to file a revised complaint will result in the dismissal of the subject allegation of the complaint.

3. The complaint allegation of discrimination in the denial of the complainant's application for a professional engineering license under Class 4 on the basis of the complainant's criminal conviction, in violation of General Statutes § 46a-80 (a), is **DISMISSED sua sponte for failure to state a claim for which relief can be granted** pursuant to pursuant to § 46a-54-88a (d) (2) of the Regulations of Connecticut State Agencies. The complainant may, on or before November 23, 2018, file a revised complaint complying with this ruling and order. Failure to file a revised complaint may result in the dismissal of the subject allegation of the complaint.

4. The complaint allegation of discrimination, under General Statutes §§ 46a-71, 46a-73, and 46a-74, in the failure of the respondent to consider the complainant for licensure as a professional engineer under Class 2 or Class 3, different levels than the Class 4 level license that he applied for, is not justiciable as being unripe, depriving the tribunal of subject matter jurisdiction. As to this portion of the complaint, the respondent's motion to dismiss is **GRANTED** pursuant to § 46a-54-88a (d) (1) of the Regulations of Connecticut State Agencies and such allegation is hereby **DISMISSED.**

It is so ordered this 9th day of October 2018.

Elissa T. Wright
Presiding Human Rights Referee

cc.

David Taylor– via email and certified mail no. 7015 0640 0007 6546 9121
Michelle Dumas-Keuler, Esq. – via email only
Colleen Valentine, Esq. – via email only

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[1] Throughout these proceedings, the complainant has appeared pro se.

[2] General Statutes § 46a-80 provides in relevant part:

"(a) Except as provided in subsection (c) of this section, subsection (b) of section 46a-81 and section 36a-489, and notwithstanding any other provisions of law to the contrary, a person shall not be disqualified from employment by the state or any of its agencies, nor shall a person be disqualified to practice, pursue or engage in any occupation, trade, vocation, profession or business for which a license, permit, certificate or registration is required to be issued by the state or any of its agencies solely because of a prior conviction of a crime.

(b) Except for a position for which any provision of the general statutes specifically disqualifies a person from employment by the state or any of its agencies because of a prior conviction of a crime, no employer, as defined in section 5-270, shall inquire about a prospective employee's past convictions until such prospective employee has been deemed otherwise qualified for the position.

(c) A person may be denied employment by the state or any of its agencies, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, profession or business by reason of the prior conviction of a crime if, after considering (1) the nature of the crime and its relationship to the job for which the person has applied; (2) information pertaining to the degree of rehabilitation of the convicted person; and (3) the time elapsed since the conviction or release, the state or any of its agencies determines that the applicant is not suitable for the position of employment sought or the specific occupation, trade, vocation, profession or business for which the license, permit, certificate or registration is sought. In making a determination under this subsection, the state or any of its agencies shall give consideration to a provisional pardon issued pursuant to section 54-130e, or a certificate of rehabilitation issued pursuant to section 54-108f or 54-130e, and such provisional pardon or certificate of rehabilitation shall establish a presumption that such applicant has been rehabilitated. If an application is denied based on a conviction for which the

applicant has received a provisional pardon or certificate of rehabilitation, the state or any of its agencies, as the case may be, shall provide a written statement to the applicant of its reasons for such denial.

(d) If a conviction of a crime is used as a basis for rejection of an applicant, such rejection shall be in writing and specifically state the evidence presented and reasons for rejection. A copy of such rejection shall be sent by registered mail to the applicant...."

After the present complaint was filed, General Statutes § 46a-80 (c) was amended by No. 10-142, § 1 of the 2010 Public Acts; see Public Acts 2010, No. 10-142, § 1; and by No. 14-26, § 6; see Public Acts 2014, No. 14-26, § 6 (see discussion infra). Those amendments have no bearing on the merits of this action. In the interest of simplicity, I refer to the current revision of the statute.

[3] General Statutes § 46a-71 provides in relevant part: "(a) All services of every state agency shall be performed without discrimination based upon ... national origin ...."

[4] General Statutes § 46a-73 provides in relevant part: "(a) No state department, board or agency may grant, deny or revoke the license or charter of any person on the grounds of ... national origin ...."

[5] General Statutes § 46a-58 (a) provides in relevant part: "(a) It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of ... national origin ...."

[6] General Statutes §46a-74 provides: "No state department, board or agency may permit any discriminatory practice in violation of section 46a-59, 46a-64 or 46a-64c."

[7] At all relevant times through to the date of this ruling, the complainant has been incarcerated, serving a twenty-five year sentence for a murder conviction (Answer ¶ 12; Respondent's motion to dismiss, p. 4.) It appears that he will remain in custody for an extended period. This prehearing motion to dismiss can be decided on the pleadings and uncontested supporting evidence. The record reflects that the incarcerated complainant has actively participated in prehearing matters throughout these proceedings through relevant filings and participation in telephonic conferences.

[8] Regs., Conn. State Agencies § 20-300-3. "Classes of applicants. Each applicant shall designate the classification in the following schedule of minimum requirements under which the application is to be considered. However, the board may, at its discretion, consider it under another classification.
(a) Professional engineer.

(1) Class 1. The applicant shall be a graduate of an approved course in engineering in a school or college approved by the board as of satisfactory standing, have a specific record of an additional four years of experience in engineering work which shall be of a character satisfactory to the board and pass a written examination prescribed by the board, the first part of which shall test the applicant's knowledge of fundamental engineering subjects, including mathematics and the physical sciences, and the second part of which shall test the applicant's ability to apply the principles of engineering to the actual practice of engineering. The first and second parts of the written examination shall be the uniform examination provided to the board by the National Council of Engineering Examiners (NCEE). Work during the course of so-called cooperative education programs does not qualify as experience in engineering work. When an advanced degree in engineering has been awarded at an approved institution, education in residence may be considered as part of the experience requirement. The board may waive the first part of the written examination where an applicant holds a license or certificate as engineer-in-training issued by proper authority of any state or territory or possession of the United States, or any country, provided the requirements for licensure or certification of engineer-in-training under which such license or certificate was issued shall

not conflict with the statutory provisions pertaining to and shall be of a standard not lower than the requirements for licensure of engineers-in-training in the State of Connecticut.

Class 1A. The board may waive the first part of the written examination for an applicant who has completed an approved course in engineering, and who has at least eight years of experience. With the exception of the above, all other requirements of this class shall be the same as for Class 1.

(2) Class 2. The applicant shall be a nongraduate with ten years or more of experience in engineering work which shall be of a character satisfactory to the board and which shall indicate knowledge, skill and education, approximating that attained through graduation from an approved course in engineering and the passing of the examination as described in Class 1. Special conditions of other nongraduate classifications are as follows:

(A) An applicant who has completed a nonapproved course in engineering in the United States and its territories requires at least six years qualifying professional experience following the degree and the passing of the examination.

(B) An applicant who has completed an engineering technology program requires the following minimum experience in acceptable engineering work and the passing of the examination:

(i) Two-year engineering technology program--(Associate Degree):

(aa) An applicant who has completed an accredited program and holds an Engineer-In-Training (EIT) license or certificate described in paragraph (c) below requires eight and one-half years qualifying professional experience following degree.

(bb) An applicant who has completed an accredited program and does not hold an EIT license or certificate requires ten years qualifying professional experience following degree.

(cc) An applicant who has completed a nonaccredited program and holds an EIT license or certificate requires ten years qualifying professional experience following degree.

(dd) An applicant who has completed a nonaccredited program and does not hold an EIT license or certificate requires ten years qualifying professional experience following degree.

(ii) Four-year engineering technology program (Bachelor's Degree):

(aa) An applicant who has completed an accredited program and holds an EIT license or certificate described in paragraph (c) below requires seven years qualifying professional experience following degree.

(bb) An applicant who completes an accredited program and does not hold an EIT license or certificate requires eight years qualifying professional experience following degree.

(cc) An applicant who completes a nonaccredited program and holds an EIT license or certificate requires nine years qualifying professional experience following degree.

(dd) An applicant who completes a nonaccredited program and does not hold an EIT license or certificate requires ten years qualifying professional experience following degree.

(C) An applicant who has completed an engineering course outside the United States and its territories requires the following minimum experience in acceptable engineering work and the passing of the examination:

(i) An applicant who holds an EIT license or certificate described in paragraph (c) below requires six to ten years qualifying professional experience following the degree where the number of years depends on the educational background of the applicant as evaluated by the board.

(ii) An applicant who does not hold an EIT license or certificate requires ten years qualifying professional experience following the degree.

(D) An applicant who has completed a science curriculum (Bachelor's Degree) requires the following minimum experience in acceptable engineering work and the passing of the examination:

(i) An applicant who holds an EIT license or certificate described in paragraph (c) below requires seven years qualifying professional experience following the degree.

(ii) An applicant who does not hold an EIT license or certificate requires eight years qualifying professional experience following the degree.

(3) Class 3. The applicant shall be a nongraduate who submits a specific record of twenty years or more of experience in engineering work. The applicant shall pass the examination as described in Class 1, but the board may waive the first part of the examination if the experience record is of a character satisfactory to the board. The record shall indicate that the applicant has been competent to be in responsible charge of his work.

(4) Class 4. The applicant shall hold a license, certificate or qualification or registration issued by a proper authority of any state or territory or possession of the United States, or any country, provided the requirements for licensure or registration of professional engineers under which such license, certificate of qualification or registration was issued shall not conflict with the statutory provisions pertaining to and be of a standard not lower than the requirements for licensure of professional engineers in the State of Connecticut."

[9] Pursuant to General Statutes § 46a-80, the factors to be considered in determining the suitability of an applicant with a criminal record include the nature of the crime and its relationship to the job for which the person has applied, the degree of rehabilitation of the applicant, and the time elapsed since the applicant's release from prison. See endnote 2 of this ruling.

[10] Section 46a-54-88a (d) (1) of the Regulations of Connecticut State Agencies, in relevant part, provides that: (d) "The presiding officer may, on his or her own or upon motion by a party, dismiss a complaint or a portion thereof if the complainant or the commission: ... (1) Fails to establish jurisdiction ..."

[11] Prudential ripeness "is a more flexible doctrine of judicial prudence [than the doctrine of constitutional ripeness under Article III of the United States Constitution], and constitutes an important exception to the usual rule that where jurisdiction exists, a ... court must exercise it." *Simmonds v. I.N.S.*, 326 F. 3d 351, 356 (2d Cir. 2003). In its constitutional dimension, the doctrine of constitutional ripeness derives from the case and controversy requirement of Article III of the United States Constitution and, "like standing, is a limitation on the power of the [federal] judiciary. It prevents courts from declaring the meaning of a law in a vacuum and from constructing generalized legal rules unless the resolution of an actual dispute requires it." Id., 356. The constraints of Article III do not apply in state courts. *Hyde v. Pysz*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV054003674 (March 21, 2006) (2006 WL 894921, * n. 8. In addition to Article III limits, the

courts have developed closely related principles guiding their discretion to forego decision on the merits in some circumstances implicating the court's subject matter jurisdiction and competency to adjudicate certain matters. 13 Charles Alan Wright & Arthur R. Miller, et al., Federal Practice and Procedure, Justiciability § 3529 (3d ed.). In the present analysis, the tribunal is guided by those prudential considerations regarding the exercise of jurisdiction in this matter.

[12] This tribunal has declined to exercise jurisdiction to adjudicate matters which were nonjusticiable as being moot; e.g., *Matthews v. Lynch*, et al., 2007 WL 2619090, OPH/WBR No. 2006-029 (May 18, 2017) (Order and dismissal); *Commission on Human Rights & Opportunities ex rel. Morales v. Trinity College*, 2013 WL 338063, CHRO No. 1110163 (February 4, 2013) (Ruling on motion to dismiss, portion of claim dismissed as moot); *Teal v. Galvin*, 2009 WL 910177, OPH/WBR No. 2008-096 (March 5, 2009) (Ruling on motion to dismiss); *Saeedi v. Department of Health & Addiction Services*, 2009 WL 4547794, OPH/WBR No. 2008-090 (November 4, 2009) (Ruling on petition to intervene) and (March 5, 2009) (Final decision), appeal dismissed sub nom. *Connecticut Department of Mental Health & Addiction Services. v. Saeedi*, Superior Court, judicial district of New Britain, Docket No. CV116008678S (February 7, 2012) (2012 WL 695512), aff'd in part, rev'd in part sub nom. *Commissioner of Mental Health & Addiction Services. v. Saeedi,* 143 Conn. App. 839 (2013); *Wilson v. State of Connecticut Judicial Branch*, 2009 WL 5207460, OPH/WBR No. 2008-069 (December 8, 2009) (Ruling on motion to dismiss); *Taylor v. Brown*, 2008 WL 4512123, OPH/WBR 2007-059 (September 12, 2008) (Ruling on motion to dismiss); and in which the complaining party was determined to lack standing. E.g., *Commission on Human Rights & Opportunities ex re. McWeeny v. Hartford*, 2005 WL 5746427, CHRO No. 0410314 (August 2, 2005); *Stutts v. Frost*, 2008 WL 4809604, OPH/WBR 2008-089 (October 27, 2008) (Ruling on motion to dismiss); see also, e.g., *Lueder v. Southern Connecticut State University*, 2006 WL 2965504, OPH/WBR 2005-11 (March 16, 2006) (Ruling on motion to dismiss); *Commission on Human Rights & Opportunities ex rel. McIntosh-Waller v. Vahlstrom*, 2007 WL 2907305, CHRO No. 0750080 (September 2007) (Ruling on motion to dismiss). The tribunal also has entertained challenges to its subject matter jurisdiction on the basis that the allegations in the complaint were nonjusticiable as being unripe. *Commission on Human Rights & Opportunities ex rel. O'Brien and Amos, et al. v. West Hartford, et al.*, 2000 WL 3575667, CHRO Nos. 9910041, 9910198, 9910199, 9910200, 9910201, 9910202 (June 5, 2000) (Ruling on motion to dismiss); *Commission on Human Rights & Opportunities ex rel. Bray-Faulks v. The Hartford Financial Services Group, Inc.*, 2004 WL 5380912, CHRO No. 16aa200797 (May 25, 2004) (Ruling on motion to dismiss).

[13] General Statutes § 46a-51 "Definitions" provides in relevant part at subsection 8: "'Discriminatory practice' means a violation of section 4a-60, 4a-60a, 4a-60g, 31-40y, 46a-58, 46a-59, 46a-60, 46a-64, 46a-64c, 46a-66, 46a-68, 46a-68c to 46a-68f, inclusive, or 46a-70 to 46a-78, inclusive, subsection (a) of section 46a-80 or sections 46a-81b to 46a-81***o***, inclusive."

[14] Section 46a-54-88a (d) (2) of the Regulations of Connecticut State Agencies mirrors, and is the functional equivalent of, Practice Book § 10-39. A motion to dismiss pursuant to § 46a-54-88a (d) (2) of the regulations, like the motion to strike, its Practice Book counterpart, challenges the legal sufficiency of the allegations of the complaint to state a claim upon which relief can be granted; *Fort Trumbull Conservancy, LLC* v. *Alves*, 262 Conn. 480, 498 (2003); *Doe* v. *Yale University*, 252 Conn. 641, 667 (2000); *Faulkner v. United Technologies Corp.*, 240 Conn. 576, 580 (1997); see Practice Book § 10-39; and is tested by the facts provable under the allegations of the pleading to which the motion to strike is addressed. *Liljedahl Bros., Inc.*, v. *Grigsby*, 215 Conn. 345, 348 (1990); *Fraser* v. *Henninger*, 173 Conn. 52, 60 (1977).

[15] The *McDonnell Douglas* analysis is not a rigid formula. The elements of a prima facie case are meant to be flexible, based on the factual scenario presented. *McDonnell Douglas Corporation v. Green*, supra, 411 U.S. at 802 n. 13; *Levy v. Commission on Human Rights & Opportunities,* 236 Conn. 96, 108 n. 20 (1996); *Miko v. Commission on Human Rights & Opportunities,* 220 Conn. 192, 204 (1991).

[16] The three-step burden shifting analysis was originally established in the *McDonnell Douglas* case as a way to prove intentional discrimination through circumstantial evidence in a disparate treatment claim alleging discriminatory failure to hire on the basis of race under Title VII of the Civil Rights Act of 1964. *Levy v. Commission on Human Rights & Opportunities,* supra, 104-105. The analysis has since then been applied to show that a respondent treated similarly situated individuals differently in violation of their civil rights in a variety of contexts, including in allegations of discrimination in housing practices in violation of General Statutes § 46a-64c; *AvalonBay Communities v. Town of Orange*, 256 Conn. 557, 591 (2001); and in allegations of discrimination in places of public accommodations in violation of Title II of the Civil Rights Act of 1964, 42 U.S.C. § 20001 – 2000a-6. *Feacher v. International Hotels Group*, 563 F. Supp. 2d 385, 402-403 (N.D. N.Y. 2008); *U.S. v. Lansdowne Swim Club*, 713 F. Supp. 785, 811 (E.D. Pa. 1989), aff'd 894 F. 2d 83 (3d Cir. 1990); see *Lizardo v. Denny's,* 270 F. 3d 94, 103 (2d Cir. 2001). The prima facie elements are slightly different when applied in disability discrimination claims, where a failure to accommodate must also be alleged. *Curry v. Allen S. Goodman, Inc.*, 286 Conn. 390, 409, 415-416 (2008); *Festa v. Board of Education of East Haven,* 145 Conn. App. 103, 113-114 (2014). The analysis has been extended to employment-retaliation claims; *Fasoli v. City of Stamford*, 64 F. Supp. 3d 285 (D. Conn. 2014); to claims of whistleblower retaliation brought under General Statutes § 4-61dd, our public whistleblower protection statute; *Schwartz v. Eagen*, 2010 WL 750974, *7, OPH/WBR 2008-095 (February 18, 2010), aff'd sub nom. *Eagen v. Commission on Human Rights & Opportunities*, Superior Court, judicial district of New Britain at New Britain, Docket No. HHB-CV10-6004333s (February 25, 2011) (2011 WL 1168499), aff'd 135 Conn. App. 563 (2012); and to claims of whistleblower retaliation brought under General Statutes § 31-51m, Connecticut's private whistleblower protection statute. *Lafond v. General Physics Services Corp.,* 50 F. 3d 165, 172 (2d Cir. 1995).

[17] General Statutes § 20-302. "Requirements for licensure" provides in relevant part:
"No person shall practice or offer to practice the profession of engineering in any of its branches, including land surveying, or use any title or description tending to convey the impression that such person is a professional engineer or a land surveyor, unless such person has been licensed or is exempt under the provisions of this chapter. The following shall be considered as minimum evidence satisfactory to the board or Commissioner of Consumer Protection that the applicant is qualified for licensure as a professional engineer, engineer-in-training, land surveyor or surveyor-in-training, respectively: (1) Professional engineer: Graduation from an approved course in engineering in a school or college approved by the board or commissioner as of satisfactory standing, a specific record of an additional four years of active practice in engineering work, which shall be of a character satisfactory to the board or commissioner, and the successful passing of a written or written and oral examination prescribed by the board, with the consent of the commissioner, the first part of which shall test the applicant's knowledge of fundamental engineering subjects, including mathematics and the physical sciences, and the second part of which shall test the applicant's ability to apply the principles of engineering to the actual practice of engineering. In lieu of graduation as specified in this subdivision, the board or commissioner may accept, as an alternative, six years or more of experience in engineering work which shall be of a character satisfactory to the board and which shall indicate knowledge, skill and education approximating that attained through graduation from an approved course in engineering. The board or commissioner may waive the written examination requirement in the case of an applicant who submits a specific record of twenty years or more of lawful practice in engineering work which shall be of a character satisfactory to the board or commissioner and which shall indicate that the applicant is competent to be in responsible charge of such work, and may waive the first part of the written examination for an applicant who has completed an approved course in engineering and has at least eight years of engineering experience."

[18] The tribunal takes judicial notice of the licensure requirements set forth in General Statutes § 20-302. *City of Derby v. Water Resources Commission*, 148 Conn. 584, 590 (1961; *Rusch v. Cox*, 130 Conn. 26, 32 (1943). Pursuant to General Statutes § 52-163, the tribunal also takes judicial notice of the applicable regulations of the respondent agency. *Clarke v. Mulcahy*, 162 Conn. 332, 336 n. 3 (1972); *Pierce v. Lanz*, 113 Conn. App. 98, 106 n. 1 (2009).

[19] The first part of the examination tests the applicant's ability knowledge of fundamental engineering subjects, including mathematics and the physical sciences, and the second part tests the applicant's ability to apply the principles of engineering to the actual practice of engineering. General Statutes § 20-302.

[20] Even though it was not raised by the parties, because it implicates the enforceability of the statute against the respondent in this case, the question of applicability of General Statutes § 46a-80 to offenders, including the complainant, while they are incarcerated prior to completion of their sentence, is addressed and resolved by the undersigned sua sponte.

[21] The statute was amended in 2014, after the present complaint was filed, to include consideration of whether the applicant has received a provisional pardon or certificate of rehabilitation as among the factors to be taken into account in making a determination under General Statutes § 46a-80 (c). See endnote 2 of this ruling.

[22] The bill that later became Public Acts 2014, No. 14-27, § 6, and amended General Statutes § 46a-80 (c), was Senate Bill No. 153, 2014 Sess., *An Act Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Certificates of Rehabilitation.* In the interest of full disclosure, as a member of the House of Representatives in 2014 representing the 41st Assembly District, the undersigned participated in the vote on P.A. 14-27, both as a member of the Judiciary Committee and in the House.

[23] The case of *Application of Avcollie*, 43 Conn. App. 13 (1993), provides support for the conclusion that § 46a-80 does not apply to individuals prior to release from prison upon completion of their sentence. In *Application of Avcollie*, the applicant attorney, who had been disbarred after being convicted of the crime of murdering his wife and sentenced to state prison, applied for reinstatement to the bar, pursuant to Practice Book § 36, *after his release from prison and while he was on parole for life*. The court decided the case solely under Practice Book § 36, and rejected the applicant's reliance on General Statutes §§ 46a-79 and 46a-80 as inapplicable to the regulation and supervision of the bar. The court in *Avcollie* did, however, provide guidance pertaining to the degree of rehabilitation of the convicted person when a prospective employer or credentialing agency applies for employment or an occupational, trade, professional, or business license. The court said: "A redemptive and rehabilitative life requires the passage of time for documentation. The more serious the conduct, the more time required to meet the burden of trustworthiness. While this panel does not articulate a specific time standard for particular acts of misconduct, manifestly, a conviction of the crime of murder requires the passage of a reasonably substantial period of time to evaluate the applicant's fitness." *Application of Avcollie*, 43 Conn. Supp. 13, 21 (1993).

[24] In the alternative, if the statute's protections were to extend to offenders before completion of their sentence, the tribunal further notes that General Statutes § 46a-80 (a), by its terms, prohibits employers from denying employment, and credentialing agencies from denying occupational, trade, professional, vocational licenses "*solely* because of a prior conviction of a crime." (Emphasis added.) Conn. Gen. Stat., § 46a-80 (a). In the present matter, the agency's denial of the complainant's application for a Class 4 professional engineering license was not based solely on his criminal conviction. Although part of the respondent's denial of the complainant's application for licensure as a professional engineer is because of his criminal conviction, the complainant's lack of objective qualifications under the applicable statutory and regulatory criteria is the fundamental reason for the denial.

[25] Under General Statutes § 20-299 (1) "'Professional engineer' means a person who is qualified by reason of his knowledge of mathematics, the physical sciences and the principles of engineering, acquired by professional education and practical experience, to engage in engineering practice, including rendering or offering to render to clients any professional service such as consultation, investigation, evaluation, planning, design or responsible supervision of construction, in connection with any public or privately-owned structures, buildings, machines, equipment, processes, works or projects in which the public welfare or the safeguarding of life, public health or property is concerned or involved."

[26] The respondent attaches to its motion to dismiss an immigration detainer issued by the U.S. Department of Homeland Security (DHS), dated February 23, 2010, requiring the Department of Corrections to notify the DHS upon the completion of complainant's sentence to allow the DHS to assume custody of the complainant for deportation (Exhibit D, respondent's motion). In determining a jurisdictional question raised by a motion to dismiss, the tribunal may consider supplementary undisputed facts in, for example, affidavits and/or other evidence submitted in support of a motion to dismiss. *Conboy v. State*, 292 Conn. 642, 651-52 (2009). Although the immigration detainer, which subjects the complainant to deportation upon his release from prison, serves to make remote the possibility that any judicial action the tribunal might take would ever be felt in a concrete way by the parties, what the law will be when and if the complainant comes to be detained by the DHS for deportation is not known with certainty at this time. *Simmonds v. I.N.S.*, 326 F. 3d 351, 360 (2d Cir. 2003). As the *Simmonds* court noted in 2003, "It is also the case that laws dealing with immigration, removal, and the rights of aliens have been especially changeable in recent years." Id. The present ruling is not based on the prospect of the claimant's deportation upon completion of his sentence pursuant to the DHS immigration detainer.