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USCIS Reopens Denied H-1B Petitions for Market Research Analysts and Clarifies “Specialty Occupation” Interpretation

Following the settlement reached in *MadKudu Inc., et al. v. USCIS, et al.*, U.S. employers may now reopen certain denied H-1B petitions for market research analyst positions. The settlement marks a significant victory for businesses battling the U.S. Citizenship and Immigration Services’ (USCIS) narrow interpretation of specialty occupations. It hopefully serves as an example for USCIS’ future interpretation of other specialty occupations.

Background

On April 16, 2020, two plaintiffs filed a class-action lawsuit in the U.S. District Court for the Northern District of California, alleging that their H-1B petitions for market research analyst positions were unlawfully denied. The complaint stated USCIS wrongly finds that the *Occupational Outlook Handbook* – a publication of the Department of Labor’s Bureau of Labor Statistics offering information on the hundreds of occupations – entry for market research analysts does not establish that this occupation is a “specialty occupation” and thus finds that the market research analyst positions do not meet the regulatory criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. Two new plaintiffs later joined the original plaintiffs in filing an amended complaint and an amended motion to certify the class. On November 17, 2020, the court granted plaintiffs’ motion for class certification.

On August 20, 2021, the parties reached a settlement that allows U.S. employers who qualify the opportunity to request that USCIS reopen and re-adjudicate their denied H-1B petitions for market research analyst positions. Moreover, all currently pending and

future H-1B petitions for market research analyst positions will benefit from USCIS' promise to follow the new guidelines stated in the settlement for at least a period of five years, starting from October 19, 2021, the date in which the court approved the settlement.

Settlement Limitations and Future Impacts

However, certain limitations come with this settlement. Most notably, it does not apply to H-1B petitions filed before January 1, 2019. The settlement narrowly defines class members eligible to request re-adjudication as U.S. employers who filed an H-1B petition between January 1, 2019 and October 19, 2021, for a market research analyst, and were denied the petition solely based on a finding that the Occupational Outlook Handbook entry for a market research analyst did not establish that the occupation is a specialty occupation. In addition, at the time a motion to reopen is filed, a class member must have time remaining on the period specified in the certified Labor Condition Application (LCA) filed with the original H-1B petition. Eligible class members will have until April 26, 2022 to file the request to reopen, following the [directions](#) posted on the USCIS website.

The settlement nevertheless affects hundreds of thousands of international workers and American businesses. According to the Student and Exchange Visitor Program (SEVP), Business Administration and Management is one of the most popular majors for international students in the United States. "Market Research Analyst" is a common job position for business-major graduates. The settlement is thus a meaningful victory for international business students and the American businesses that rely on their perspectives and skills. Yet the impact of this settlement goes beyond international business degree holders. American employers have been battling USCIS for years on its narrow interpretation of H-1B Specialty Occupations. While this settlement is specific to market research analyst positions, it sets an example for other occupations that have previously been found to not qualify as a "specialty occupation" for similar reasons. In future cases where an H-1B petition is denied on similar grounds, this settlement can be

cited as a powerful counter example.

If you have any questions relating to the updates listed above, please contact [Yan \(Michelle\) Xu](#) or any attorney in Frost Brown Todd's [Immigration](#) practice group.

**Intern Selena Shi contributed to this article.*

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