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17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN JOSE DIVISION

20 MADKUDU INC.; QUICK FITTING, INC.,  
21 Individually and On Behalf of  
22 All Others Similarly Situated,

23 Plaintiffs,

24 v.

25 U.S. CITIZENSHIP AND IMMIGRATION  
26 SERVICES; Kenneth T. CUCCINELLI, Senior  
27 Official Performing Duties of the Director, U.S.  
Citizenship and Immigration Services, in his  
official capacity,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**CLASS ACTION  
Immigration Case**

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*\*Applications for admission pro hac vice forthcoming*

**INTRODUCTION**

1  
2 1. Employing boilerplate language and uniform faulty reasoning, Defendant U.S.  
3 Citizenship and Immigration Services (USCIS) routinely and unlawfully denies nonimmigrant  
4 employment-based petitions filed by U.S. employers under 8 U.S.C. §§ 1101(a)(15)(H)(i)(b),  
5 1184(c)(1) and 1184(i), also known as H-1B petitions, to classify market research analyst  
6 positions as a “specialty occupation.” Defendant USCIS’ denials violate the Immigration and  
7 Nationality Act (INA) and implementing regulations, and the Administrative Procedure Act  
8 (APA), 5 U.S.C. § 701, *et seq.* Plaintiffs MadKudu Inc. and Quick Fitting, Inc., two U.S.  
9 corporations, challenge Defendant USCIS’ denial of H-1B petitions they filed on behalf of  
10 noncitizens they sought to hire in the market research analyst occupation, as well as Defendant  
11 USCIS’ pattern and practice of arbitrarily and unlawfully denying petitions for market research  
12 analysts filed by similarly situated H-1B petitioners.

14 2. The H-1B nonimmigrant visa classification allows highly educated noncitizens to  
15 work for U.S. employers in specialty occupations. A specialty occupation is one which requires  
16 the theoretical and practical application of a body of highly specialized knowledge for which a  
17 bachelor’s or higher degree in a specific specialty (or its equivalent) is required. *See* 8 U.S.C.  
18 § 1184(i)(1).

20 3. By regulation, a U.S. employer petitioner can establish that a position is within a  
21 specialty occupation through any one of several tests set forth in the governing regulation.  
22 8 C.F.R. § 214.2(h)(4)(iii)(A) (2020). Relevant here is the first test, which authorizes a position  
23 to qualify as a specialty occupation if “[a] baccalaureate or higher degree or its equivalent is  
24 normally the minimum requirement for entry into the particular position.” 8 C.F.R.  
25 § 214.2(h)(4)(iii)(A)(1) (2020) (hereinafter, the first regulatory test). Where Defendant USCIS  
26

1 determines that a U.S. employer petitioner satisfies this test, it has demonstrated that the  
2 occupation is a “specialty occupation” and it can hire a qualified noncitizen to fill the position.

3 4. In denying H-1B petitions for market research analysts, Defendant USCIS relies  
4 on the Occupational Outlook Handbook (OOH), a publication of the Bureau of Labor Statistics  
5 of the U.S. Department of Labor, as an authoritative source on the educational requirements for  
6 the occupations which it profiles. Defendant USCIS thus relies upon it to determine if a  
7 bachelor’s or higher degree in a specific specialty, or its equivalent, is normally required for  
8 entry into the occupation, thus satisfying the first regulatory test.

9  
10 5. The OOH’s profile of the market research analyst occupation demonstrates that  
11 this occupation satisfies the first regulatory test; that is, it demonstrates that a bachelor’s degree  
12 in a specific specialty—market research or a related field—is typically, or normally, required for  
13 work as a market research analyst.

14 6. Defendant USCIS has a pattern and practice of misinterpreting the OOH’s profile  
15 of a market research analyst, mistakenly finding that it does not demonstrate that this occupation  
16 satisfies the first regulatory test. In so finding, Defendant USCIS also has a pattern and practice  
17 of misinterpreting the INA, 8 U.S.C. § 1184(i)(1), and the first regulatory test, 8 C.F.R.  
18 § 214.2(h)(4)(iii)(A)(1) (2020).

19  
20 7. Had Defendant USCIS correctly applied the first regulatory test and found that the  
21 occupation was a specialty occupation in Plaintiffs’ and putative class members’ cases, it would  
22 have approved their petitions. Plaintiffs seek relief under the APA and the Declaratory Judgment  
23 Act, 28 U.S.C. §§ 2201-2202, on behalf of themselves and putative class members to remedy  
24 Defendants’ misapplication of the specialty occupation statute and regulations and its  
25 misinterpretation of the OOH.  
26  
27

**JURISDICTION**

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2 8. This case arises under the INA, 8 U.S.C. § 1101 *et seq.*, and the APA, 5 U.S.C.  
3 § 701 *et seq.* This Court has jurisdiction over the subject matter of this action pursuant to  
4 28 U.S.C. § 1331 (federal question jurisdiction). This Court has authority to grant relief under  
5 the APA and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02. The United States has  
6 waived sovereign immunity under 5 U.S.C. § 702.

**VENUE**

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8 9. Venue in this judicial district is proper under 28 U.S.C. § 1391(e)(1)(C) because  
9 Defendants are a U.S. agency and an officer of a U.S. agency acting in his official capacity,  
10 Plaintiff MadKudu Inc. resides in this District, and no real property is involved in this action.

**INTRADISTRICT ASSIGNMENT**

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12  
13 10. This action is properly assigned to the San Jose Division of this Court as Plaintiff  
14 MadKudu Inc. resides in Santa Clara County and a substantial part of the events which give rise  
15 to this claim occurred in Santa Clara County.

**FINAL AGENCY ACTION AND  
EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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18 11. Defendant USCIS’ denial of Plaintiffs’ and putative class members’ H-1B  
19 petitions constitutes final agency action under the APA, as does its policy, pattern and/or practice  
20 regarding its adjudications of H-1B petitions for market research analysts. *See* 5 U.S.C. §§  
21 551(13); 701(b)(2); 704. Neither the INA nor implementing regulations require an administrative  
22 appeal of the denials. Accordingly, Plaintiffs have no further administrative remedies to exhaust.

**PARTIES**

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24  
25 12. Plaintiff MadKudu Inc. is a marketing analytics software company headquartered  
26 in Mountain View, Santa Clara County, California. MadKudu filed an H-1B petition for a  
27

1 position in the market research analyst occupation on or about April 2, 2019, which Defendant  
2 USCIS denied on February 24, 2020 for, inter alia, failing to demonstrate that the position  
3 satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) (2020), the first regulatory test for a specialty  
4 occupation.

5 13. Plaintiff Quick Fitting, Inc. is a supplier of plumbing fittings headquartered in  
6 Warwick, Rhode Island. Quick Fitting filed an H-1B petition for a market research analyst on or  
7 about August 20, 2019, which Defendant USCIS denied on January 23, 2020 for, inter alia,  
8 failing to demonstrate that the position satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) (2020), the first  
9 regulatory test for a specialty occupation.  
10

11 14. Defendant USCIS is a component of the Department of Homeland Security,  
12 6 U.S.C. § 271, and an agency within the meaning of the APA, 5 U.S.C. § 551(1). USCIS is  
13 responsible for adjudicating immigration benefits, including H-1B petitions. USCIS denied  
14 Plaintiffs' H-1B petitions.  
15

16 15. Defendant Kenneth T. Cuccinelli is, at the time this Complaint is filed, the Senior  
17 Official Performing Duties of the Director, as the position of USCIS Director remains vacant. In  
18 this position, he is responsible for overseeing the adjudication of immigration benefits and  
19 establishing and implementing governing policies. The USCIS Director has ultimate  
20 responsibility for the adjudication of H-1B petitions. Defendant Cuccinelli is sued in his official  
21 capacity.  
22

23 **OVERVIEW OF THE LAW AND ADMINISTRATIVE  
24 DECISIONMAKING PROCESS**

25 16. Congress established a nonimmigrant classification to permit noncitizens to  
26 temporarily perform services in the United States in specialty occupations. 8 U.S.C.  
27 § 1101(a)(15)(H)(i)(b). This nonimmigrant classification is commonly referred to as H-1B.

1 17. A U.S. employer must follow a multi-step, two-agency process to obtain an H-1B  
2 classification for a position it seeks to fill with a foreign worker. First, it must file a Labor  
3 Condition Application with the U.S. Department of Labor in which it attests to standards to  
4 which it will adhere. On this application, the employer must identify the Standard Occupational  
5 Classification (SOC) code and occupational title of the position it seeks to fill. The SOC system  
6 is a federal statistical standard used by federal agencies to classify workers into occupational  
7 categories for the purpose of collecting, calculating, or disseminating data.  
8

9 18. Upon the Department of Labor's certification of the Labor Condition Application,  
10 the U.S. employer will file it and an H-1B petition with Defendant USCIS. In its H-1B petition,  
11 the U.S. employer petitioner must demonstrate by a preponderance of the evidence that the  
12 position it seeks to fill is in a specialty occupation.

13 19. A "specialty occupation" is one that requires the "(A) theoretical and practical  
14 application of a body of highly specialized knowledge, and (B) attainment of a bachelor's or  
15 higher degree in the specific specialty (or its equivalent) as a minimum for entry into the  
16 occupation in the United States." 8 U.S.C. § 1184(i)(1).  
17

18 20. The regulatory definition of "specialty occupation" first repeats the statutory  
19 definition and then provides a non-exhaustive list of fields as examples of specialty occupations:

20 Specialty occupation means an occupation which requires theoretical and practical  
21 application of a body of highly specialized knowledge in fields of human endeavor  
22 including, but not limited to, architecture, engineering, mathematics, physical sciences,  
23 social sciences, medicine and health, education, business specialties, accounting, law,  
24 theology, and the arts, and which requires the attainment of a bachelor's degree or higher  
25 in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the  
26 United States.

27 8 C.F.R. § 214.2(h)(4)(ii) (2020).

1 21. A proposed job must satisfy one—but only one—of four independent regulatory  
2 tests to qualify as a specialty occupation. Relevant here is the first regulatory test, which is  
3 satisfied if the petitioning U.S. employer demonstrates that:

4 A baccalaureate or higher degree or its equivalent is normally the minimum requirement  
5 for entry into the particular position.

6 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) (2020).<sup>1</sup> Defendant USCIS interprets this test as consistent with  
7 8 U.S.C. § 1184(i)(1) only if the bachelor’s or higher degree is in a “specific specialty.”

8 22. When considering whether the petitioning U.S. employer’s job meets the first  
9 regulatory test for a specialty occupation, Defendant USCIS first must identify the occupation  
10 within which the job falls. To do this, Defendant USCIS routinely considers the SOC code and  
11 corresponding occupational title the employer provided in the Labor Condition Application it  
12 submitted to the U.S. Department of Labor.

13 23. After identifying the occupation within which the position falls, Defendant  
14 USCIS consults the OOH with respect to that position. The OOH, updated every two years,  
15 provides profiles of hundreds of occupations that represent most, though not all, jobs in the  
16 United States. U.S. Bureau of Labor Statistics, *Occupational Information Contained in the OOH*  
17 (Jan. 16, 2020), <https://www.bls.gov/ooH/about/occupational-information-included-in-the->  
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21 <sup>1</sup> The other three tests are:

- 22 (2) The degree requirement is common to the industry in parallel positions among similar  
23 organizations or, in the alternative, an employer may show that its particular position is  
24 so complex or unique that it can be performed only by an individual with a degree;  
25 (3) The employer normally requires a degree or its equivalent for the position; or  
26 (4) The nature of the specific duties are so specialized and complex that knowledge  
27 required to perform the duties is usually associated with the attainment of a baccalaureate  
or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A) (2020). None is relevant here as each presents an alternative means  
of demonstrating that a position is a specialty occupation. Consequently, an approval under any  
one of them is sufficient even where Defendant USCIS denies a petition under one or more of  
the other regulatory tests. *See* 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4).



1 ooh.htm. Among other data, each occupational profile describes the “typical duties performed by  
2 the occupation” and the “typical education and training needed to enter the occupation.” *Id.*  
3 Defendant USCIS recognizes the OOH as an authoritative source on the duties and educational  
4 requirements of the occupations profiled within it.

5 24. If the occupation the petitioning employer designated in the Labor Condition  
6 Application is in the OOH, Defendant USCIS will compare the H-1B petitioning employer’s job  
7 duties and education requirements with the OOH entry. Where Defendant USCIS decides that  
8 the petitioning employer has correctly identified the job as being within the specified occupation,  
9 it relies upon the OOH to determine whether to approve the H-1B petition under the first  
10 regulatory test—that is, whether the OOH establishes that a bachelor’s degree or higher in a  
11 specific specialty or its equivalent is the normal minimum prerequisite for entry into the  
12 occupation.  
13

14 25. The OOH entry for market research analyst contains the following description of  
15 the educational requirements for entry into the occupation:  
16

17 *Market research analysts typically need a bachelor’s degree in market research or a*  
18 *related field. Many have degrees in fields such as statistics, math, or computer science.*  
19 *Others have backgrounds in business administration, the social sciences or*  
20 *communications.*

21 *Courses in statistics, research methods, and marketing are essential for these workers.*  
22 *Courses in communications and social sciences, such as economics or consumer behavior,*  
23 *are also important.*

24 Some market research analyst jobs require a master’s degree. Several schools offer  
25 graduate programs in marketing research, but many analysts complete degrees in other  
26 fields, such as statistics and marketing, and/or earn a master’s degree in business  
27 administration (MBA). A master’s degree is often required for leadership positions or  
positions that perform more technical research.

1 OOH, *How to Become a Market Research Analyst* (Sept. 4, 2019)

2 <https://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (emphasis  
3 added).

4 26. The OOH establishes that a market research analyst satisfies the first regulatory  
5 test for a specialty occupation. First, by establishing that market research analysts “typically  
6 need” a bachelor’s degree, with some jobs requiring a master’s degree, it demonstrates that a  
7 bachelor’s degree is “normally” the minimum degree requirement for the occupation. 8 C.F.R.  
8 § 214.2(h)(4)(iii)(A)(1) (2020). Second, the OOH also establishes that entry into the occupation  
9 “typically” requires a bachelor’s degree in “market research or a related field,” and identifies the  
10 coursework that is “essential” for this occupation—statistics, research methods and marketing—,  
11 thus demonstrating that a “body of highly specialized knowledge” is necessary to perform the job  
12 of a market research analyst. Combined, this information demonstrates that the degree is in a  
13 specific specialty.

14 27. Defendant USCIS has a pattern and practice of erroneously denying H-1B  
15 petitions for market research analysts. In its decisions, which routinely employ the same  
16 reasoning and general language, Defendant USCIS ignores the OOH’s statement: “Market  
17 research analysts typically need a bachelor’s degree in market research or a related field.”  
18 Instead, Defendant USCIS finds that the OOH indicates that several degrees or fields of study  
19 may qualify a person to perform the duties of a market research analyst, and then erroneously  
20 concludes that this indicates that the degree requirement is *not* in a specific specialty. In so  
21 deciding, Defendant USCIS erroneously ignores the regulatory term “normally.”  
22

23 28. Defendant USCIS’ adjudicators rely on—and on information and belief, are  
24 bound by—training materials, templates, and other guidance from Defendant USCIS when  
25  
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1 making H-1B specialty occupation decisions, including decisions regarding petitions for market  
2 research analysts. Upon information and belief, Defendant USCIS generally, and erroneously,  
3 fails to include these documents in the administrative record of the case that is being decided.  
4 *See Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 555 (9th Cir. 1989) (explaining that the  
5 administrative record “consists of all documents and materials directly or *indirectly* considered  
6 by agency decision-makers and includes evidence contrary to the agency’s positions”) (emphasis  
7 in original) (quotation omitted). The training and guidance which Defendant USCIS provides its  
8 adjudicators reflects Defendant USCIS’ policy with respect to the adjudication of market  
9 research analyst H-1B petitions.  
10

11 29. In its decisions, Defendant USCIS misinterprets the plain meaning of the term  
12 “specific specialty.” 8 U.S.C. § 1184(i)(1). That multiple degrees will prepare a person to be a  
13 market research analyst does not negate the fact that the typical degrees for this occupation are  
14 all closely related to market research and, thus, constitute a specific specialty. *See, e.g., Raj &*  
15 *Co. v. U.S. Citizenship & Immigration Servs.*, 85 F. Supp. 3d 1241, 1247 (W.D. Wash. 2015)  
16 (rejecting USCIS’ interpretation of the OOH entry for market research analysts and holding that  
17 it “impermissibly narrows the plain language of the statute”). Defendant USCIS also ignores the  
18 statutory language that the equivalent of a bachelor’s or higher degree in a specific specialty can  
19 satisfy the statutory definition of a specialty occupation. *See* 8 U.S.C. § 1184(i)(1).  
20

21 30. The denials in Plaintiffs’ cases are representative of a pattern and practice of  
22 similar USCIS decisions. Plaintiffs know of at least 66 H-1B market research analyst petitions  
23 that Defendant USCIS denied in the past three calendar years, employing the same reasoning and  
24 similar language in all. On information and belief, these 66 decisions represent only a fraction of  
25 Defendant USCIS’ decisions denying market research analyst H-1B petitions on this basis during  
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1 this period. Moreover, this pattern and practice is continuing. Including their own cases,  
2 Plaintiffs are aware of 6 decisions issued in the first two months of 2020, in which Defendant  
3 USCIS denied H-1B petitions for market research analyst positions on this same basis. On  
4 information and belief, these 6 decisions are only a fraction of the total number of market  
5 research analyst H-1B petitions that have been denied by Defendant USCIS on this basis to date  
6 in 2020.

### 7 **PLAINTIFFS' FACTUAL ALLEGATIONS**

8  
9 31. Plaintiff MadKudu Inc. is a marketing analytics software company headquartered  
10 in Mountain View, California. Established in 2014, its clients are business-to-business software  
11 as a service (SaaS) companies who want an alternative to the incomplete, yet time-intensive  
12 manual development of sales leads. MadKudu analyzes a client's customers and segments sales  
13 leads based on relevant demographic data, such as the lead's title, industry and business size. Its  
14 data analysis determines which customers are ready to buy from the client. MadKudu's  
15 predictive models adapt automatically based on data, accounting for changes in its clients'  
16 products and markets for new customers.  
17

18 32. On or about April 2, 2019, MadKudu filed a petition with Defendant USCIS  
19 seeking to employ Rafikah Binte Mohamed Halim in H-1B status in a market research analyst  
20 job with the title of product manager. Ms. Mohamed Halim, a national of Singapore, had worked  
21 for MadKudu in H-1B<sup>2</sup> status since June 2018 as product manager. Ms. Mohamed Halim holds  
22  
23  
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25 <sup>2</sup> Congress established the H-1B1 classification for nationals of Chile and Singapore under  
26 Fair Trade Agreements with Chile and Singapore. *See* 8 U.S.C. § 1184(g)(8)(A)(i)-(ii),  
27 (g)(8)(B)(ii)(I)-(II). The job must be in a "specialty occupation" and the definition is identical to  
the definition for the H-1B classification. 8 U.S.C. § 1184(i)(3).

1 a bachelor's degree in Business Administration with specializations in marketing and analytics  
2 from the National University of Singapore.

3 33. MadKudu attached to its H-1B petition a Labor Condition Application certified  
4 by the Department of Labor, which identified the position by SOC Code 13-1161, an occupation  
5 entitled Market Research Analysts and Marketing Specialists.

6 34. Defendant USCIS denied the petition on February 24, 2020 for failing to  
7 demonstrate that the position was a specialty occupation under any of the independent regulatory  
8 tests.  
9

10 35. Following its pattern and practice, Defendant USCIS determined that Plaintiff  
11 MadKudu's petition did not meet the first regulatory test because the OOH did not show that  
12 market research analyst positions normally require a minimum of a bachelor's degree or its  
13 equivalent in a specialty occupation at the entry level. Defendant USCIS stated that "a range of  
14 educational credentials may qualify an individual to perform the duties of a Market Research  
15 Analysts [sic]."  
16

17 36. In concluding that Plaintiff MadKudu did not meet the first regulatory test,  
18 Defendant USCIS ignored entirely the OOH's statements that "[m]arket research analysts  
19 typically need a bachelor's degree in market research or a related field" and that "[c]ourses in  
20 statistics, research methods, and marketing are essential for these workers."  
21

22 37. Established in 2004, Plaintiff Quick Fitting, Inc. is a corporation headquartered in  
23 Warwick, Rhode Island. It is the leading supplier of quick connection technologies that can be  
24 used in plumbing, electrical, heating, air-conditioning, fire suppression and oil and gas  
25 applications. It holds over fifty-five patents and has another sixty that are pending. Currently, it  
26 is launching eight new product lines.  
27

1 38. On or about August 20, 2019, Quick Fitting, Inc. filed a petition with Defendant  
2 USCIS seeking an extension of Xiaomeng Liu’s H-1B status based on her employment as a  
3 market research analyst. It sought to continue to employ Ms. Liu in this position for an additional  
4 period with no change in job duties from the H-1B petition previously approved by Defendant  
5 USCIS. Ms. Liu, who had been working with Quick Fitting, Inc. in H-1B status since December  
6 2012, holds a master’s degree in Business Administration with a marketing concentration from  
7 Johnson and Wales University in Providence, Rhode Island.

8  
9 39. Quick Fitting, Inc. attached to its H-1B petition a Labor Condition Application  
10 certified by the Department of Labor, which identified the position by SOC Code 13-1161, an  
11 occupation entitled Market Research Analysts and Marketing Specialists.

12 40. Defendant USCIS denied the petition on January 23, 2020 for failing to  
13 demonstrate that the position was a specialty occupation under any of the independent regulatory  
14 tests.

15  
16 41. Following its pattern and practice, Defendant USCIS determined that Plaintiff  
17 Quick Fitting, Inc.’s petition did not meet the first regulatory test because the OOH did not show  
18 that market research analyst positions normally require a minimum of a bachelor’s degree or its  
19 equivalent in a specialty occupation at the entry level. Defendant USCIS noted that “[a] range of  
20 educational qualifications such as business administration and the social sciences may qualify an  
21 individual to perform the duties of a Market Research Analyst and Marketing Specialist.”  
22 Defendant USCIS concluded that the “requirement of a degree with a generalized title, such as  
23 business administration or liberal arts, without further specification, does not establish  
24 eligibility.”  
25  
26  
27

1 42. In concluding that Plaintiff Quick Fitting, Inc. did not meet the first regulatory  
2 test, Defendant USCIS ignored entirely the OOH's statements that "[m]arket research analysts  
3 typically need a bachelor's degree in market research or a related field" and that "[c]ourses in  
4 statistics, research methods, and marketing are essential for these workers."

5 **CLASS ALLEGATIONS**

6 43. Named Plaintiffs bring this action on behalf of themselves and all others who are  
7 similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). A class action  
8 is proper because this action involves questions of law and fact common to the class, the class is  
9 so numerous that joinder of all members is impractical, Plaintiffs' claims are typical of the  
10 claims of the class, Plaintiffs will fairly and adequately protect the interests of the class, and  
11 Defendants have acted on grounds that apply generally to the class, so that final injunctive relief  
12 or corresponding declaratory relief is appropriate with respect to the class as a whole.

13 44. The named Plaintiffs seek to represent the following class:

14 All U.S. employers who in 2019 filed, or in the future will file, a petition (Form  
15 I-129 or any successor) with USCIS for an H-1B classification under 8 U.S.C.  
16 § 1101(a)(15)(H)(i)(b) for a market research analyst where:

- 17 • USCIS denied or will deny the petition solely or in part based on a  
18 finding that the OOH entry for market research analyst does not establish  
19 that the occupation is a specialty occupation, and thus does not satisfy  
20 8 C.F.R. § 214.2(h)(4)(iii)(A)(1); and
- But for this finding, the petition would be approved.

21 45. The proposed class is so numerous that joinder of all members is impracticable.  
22 Plaintiffs are not aware of the precise number of potential class members but reasonably estimate  
23 that the number of class members totals at least 40; Defendants, however, are in a position to  
24 identify this number. Upon information and belief, there are many more than two dozen current  
25 members of the class and an unknown number—likely in the hundreds—of future members.  
26  
27

1 46. Defendant USCIS denied an average of 22 H-1B petitions for market research  
2 analysts in each of the last three full calendar years (between 18 and 25 each year) and is on  
3 track to deny at least that many in 2020—having denied at least 6 such petitions, including  
4 Plaintiffs’, in the first two months of the year. All such denials found that the OOH did not  
5 establish that a market research analyst was a specialty occupation under the first regulatory test.  
6 All such denials contained the same or similar language as that found in Plaintiffs’ denials, along  
7 with the same reasoning.

8  
9 47. On information and belief, these decisions represent only a fraction of the H-1B  
10 petitions for market research analysts denied on this basis each year. These decisions were issued  
11 by Defendant USCIS’ Administrative Appeals Office (USCIS AAO) and posted on Westlaw.  
12 They are the only USCIS decisions that are publicly available. Only a small fraction of H-1B  
13 petitioners whose petitions are denied appeal the denial to USCIS’ AAO. Consequently, it is  
14 reasonable to infer that these decisions represent only a fraction of the H-1B petitions for market  
15 research analysts that were denied during the years in question. These numbers, thus, support a  
16 reasonable estimate that there are at least several dozen current putative class members, and  
17 likely many more. This reasonable estimate of current class members coupled with the existence  
18 of unknown future class members makes joinder impracticable.

19  
20 48. Questions of law and fact common to the proposed class predominate over any  
21 questions affecting only the individually named Plaintiffs. These include, but are not limited to,  
22 whether Defendant USCIS misinterprets the OOH entry for market research analyst; whether  
23 Defendant USCIS misinterprets 8 U.S.C. § 1184(i)(1) and 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)  
24 (2020); whether Defendant USCIS has a pattern and practice of denying the H-1B petitions of  
25 Plaintiffs and putative class members on the basis alleged in this suit; and whether its denial of  
26



1 Plaintiffs' and putative class members' H-1B petitions violates the APA in that it is arbitrary and  
2 capricious, and contrary to the INA and its implementing regulations. Resolution of these  
3 common questions will resolve the entire case.

4 49. Plaintiffs' claims are typical of the claims of the proposed class insofar as they  
5 have been subject to Defendant USCIS' pattern and practice of denying H-1B petitions for  
6 market analyst positions under the first regulatory test based upon a misinterpretation of the  
7 statute, regulations and the OOH.  
8

9 50. Plaintiffs will fairly and adequately protect the interests of the proposed class  
10 members because they seek relief on behalf of the class as a whole and have no interest  
11 antagonistic to other class members.

12 51. Plaintiffs are represented by competent counsel with extensive experience in  
13 complex class actions and extensive knowledge of immigration law.

14 52. In denying the H-1B petitions of Plaintiffs and putative class members,  
15 Defendants have acted and will continue to act on grounds generally applicable to the entire  
16 class, thereby making final injunctive and declaratory relief appropriate to the class as a whole.  
17 The class may therefore be properly certified under Fed. R. Civ. P. 23(b)(2).  
18

19 **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

20 53. An actual and substantial controversy exists between the Plaintiffs and proposed  
21 class members and the Defendants as to their respective rights and obligations. Plaintiffs contend  
22 that Defendants' actions violate Plaintiffs' rights and the rights of the proposed class members.  
23

24 54. Defendants' pattern and practice of misinterpreting the OOH and misapplying the  
25 law forecloses Plaintiffs and the class they seek to represent from demonstrating that their jobs  
26 are in a specialty occupation based on the first regulatory test. Where the OOH demonstrates that  
27

1 a bachelor's or higher degree in a specific specialty is normally the minimum requirement for  
2 entry in the occupation that includes the job the H-1B petition seeks to fill, no further evidence is  
3 needed. This is the case with respect to the OOH entry for market research analyst.

4 55. Plaintiffs and proposed class members have suffered a legal wrong and have been  
5 adversely affected or aggrieved by agency action for which there is no adequate remedy at law.  
6 Defendants' policy and practice of denying H-1B petitions for market research analysts under the  
7 first regulatory test constitutes final agency action. There are no administrative remedies that  
8 Plaintiffs must exhaust.

9  
10 56. Based on the foregoing, the Court should grant declaratory and injunctive relief  
11 under 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 701-706.

12 **CAUSES OF ACTION**  
13 **COUNT ONE**  
14 **(Violation of the APA)**

15 57. Plaintiffs re-allege and incorporate by reference, as if fully set forth herein, the  
16 allegations in paragraphs 1-56 above.

17 58. Plaintiffs and proposed class members seek to hire noncitizens to work in the  
18 specialty occupation of market research analyst. Plaintiffs and proposed class members have a  
19 right to have their H-1B petitions adjudicated by Defendants in accordance with 8 U.S.C.  
20 § 1184(i)(1) and 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) (2020).

21 59. Defendants have a pattern and practice of denying these petitions in violation of  
22 these statutory and regulatory provisions. Defendants' pattern and practice of denying these  
23 petitions reflects a policy, whether written or unwritten, that is contrary to law.

24 60. Although recognizing the OOH as authoritative for purposes of determining  
25 whether an occupation profiled within it satisfies the first regulatory test for a specialty  
26 occupation, Defendant USCIS routinely misreads the OOH's profile for market research analyst.  
27

1 Simultaneously, Defendant USCIS misinterprets the meaning of the statutory term “specific  
2 specialty,” 8 U.S.C. § 1184(i)(1), ignores entirely the regulatory term “normally,” 8 C.F.R.  
3 § 214.2(h)(4)(iii)(A)(1) (2020), and misapplies the statute and the regulation. But for  
4 Defendant’s violation of the law, Defendant USCIS would find that Plaintiffs and putative class  
5 members satisfy the first regulatory test for demonstrating that their jobs are in a specialty  
6 occupation.

7  
8 61. Defendants’ pattern and practice of misinterpreting the OOH and misinterpreting  
9 and misapplying 8 U.S.C. § 1184(i)(1) and C.F.R. § 214.2(h)(4)(iii)(A)(1) (2020) renders its  
10 denials of Plaintiffs’ and putative class members’ H-1B petitions arbitrary and capricious, an  
11 abuse of discretion, and otherwise not in accordance with law. *See* 5 U.S.C. § 706(2)(A).

12 **COUNT TWO**

13 **(Violation of the INA and its Implementing Regulations)**

14 62. Plaintiffs re-allege and incorporate by reference, as if fully set forth herein, the  
15 allegations in paragraphs 1-56 above.

16 63. Plaintiffs and proposed class members seek to hire noncitizens to work in the  
17 specialty occupation of market research analyst. Plaintiffs and proposed class members have a  
18 right to have their H-1B petitions adjudicated by Defendants in accordance with 8 U.S.C.  
19 § 1184(i)(1) and 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) (2020). Defendants have a pattern and practice  
20 of denying these petitions in violation of these statutory and regulatory provisions.

21  
22 64. Although recognizing the OOH as authoritative for purposes of determining  
23 whether an occupation profiled within it satisfies the first regulatory test for a specialty  
24 occupation, Defendant USCIS routinely misreads the OOH’s profile for market research analyst.  
25 Simultaneously, Defendant USCIS misinterprets the meaning of the statutory term “specific  
26 specialty,” 8 U.S.C. § 1184(i)(1), ignores the regulatory term “normally,” 8 C.F.R.  
27

1 § 214.2(h)(4)(iii)(A)(1) (2020), and misapplies the statute and the regulation. But for  
2 Defendant's violation of the law, Defendant USCIS would find that Plaintiffs and putative class  
3 members satisfy the first regulatory test for demonstrating that their jobs are in a specialty  
4 occupation.

5 65. Defendants' pattern and practice of misinterpreting the OOH and misinterpreting  
6 and misapplying 8 U.S.C. § 1184(i)(1) and C.F.R. § 214.2(h)(4)(iii)(A)(1) (2020) renders their  
7 denial of Plaintiffs' and putative class members' H-1B petitions contrary to law. An actual  
8 controversy exists between the parties over which this Court may issue a declaratory judgment,  
9 specifying the legal rights of the Plaintiffs and putative class members and the legal obligations  
10 of the Defendants, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

11  
12 **REQUEST FOR RELIEF**

13 WHEREFORE, Plaintiffs request that this Court grant the following relief:

- 14 (1) Assume jurisdiction over this matter;
- 15 (2) Certify the case as a class action, as proposed herein;
- 16 (3) Appoint Plaintiffs as representatives of the class and Plaintiffs' counsel as class  
17 counsel;
- 18 (4) Set aside and vacate the denials of Plaintiffs' and proposed class members' H-1B  
19 petitions;
- 20 (5) Declare that Defendants have unlawfully engaged in a pattern and practice of  
21 misinterpreting the OOH and misinterpreting and misapplying 8 U.S.C. § 1184(i)(1) and  
22 8 C.F.R. § 214.2(h)(4)(iii)(A)(1);  
23  
24  
25  
26  
27

1 (6) Enjoin Defendants from violating the plain meaning of “typically” as used in the  
2 OOH as anything other than “normally” when determining whether a U.S. employer has met the  
3 first regulatory test for demonstrating that its job is in a specialty occupation;

4 (7) Award Plaintiffs’ counsel reasonable attorneys’ fees under the Equal Access to  
5 Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and

6 (8) Grant such other and further relief as the Court deems just, equitable and  
7 appropriate.  
8

9 Respectfully submitted this 16<sup>th</sup> day of April, 2020,

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\* *Applications for Admission Pro Hac Vice Forthcoming*