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Immigration

Settlement Agreement Outlines ‘New, Overarching’ Guidance for H-1B Petitions

Legal Update

11.14.2021

By Immigration Group

This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.

U.S. Citizenship and Immigration Services (USCIS) reached a settlement agreement in the case of *MadKudu Inc. v. USCIS* that the agency said “outlines new, overarching guidance” for adjudicating pending or future H-1B petitions for market research analysts.

USCIS had denied plaintiffs’ H-1B petitions for market research analyst positions based on the agency’s determination that the Department of Labor’s *Occupational Outlook Handbook* entry for market research analysts did not establish that this occupation was a “specialty occupation.” The settlement agreement includes detailed instructions on how USCIS is to evaluate submitted evidence for and adjudicate such petitions, including how educational requirements and documentation can be met.

The agreement allows class members, as defined in the USCIS news alert and the settlement agreement, to submit a Form I-290B, Notice of Appeal or Motion, to request that certain denied Forms I-129, Petition for a Nonimmigrant Worker, seeking H-1B classification for a market research analyst be reopened and adjudicated per the terms of the settlement agreement. No fee will be charged for such requests. Class members have until April 26, 2022, to submit their Forms I-290B.

USCIS said it will decide on all eligible, timely filed reopening requests within 90 days of receipt of the physical file at the adjudicating office. USCIS will “attempt to prioritize” reopening requests for petitions with labor condition applications (LCAs) expiring fewer than 90 days after the Form I-290B is properly filed with USCIS.