

USCIS Response to Coronavirus (COVID-19)



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Directions for Class Members Filing Motions to Reopen Pursuant to Settlement Agreement in H-1B Market Research Analyst Class Action Litigation

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USCIS reached a [settlement agreement \(PDF, 268.06 KB\)](#) [PDF] in the case of MadKudu Inc., et al. v. U.S. Citizenship and Immigration Services, et al., No. 20-cv-2653 (N.D. Cal.). On Oct. 19, 2021, the U.S. District Court, Northern District of California, San Jose Division, granted final approval of the settlement agreement. This agreement outlines new, overarching guidance for adjudicating pending or future H-1B petitions for market research analysts.

Additionally, the agreement allows class members 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 a request. Class members have until April 26, 2022 to submit a Form I-290B.

Class members eligible to submit a Form I-290B are those that:

- Filed a Form I-129 H-1B petition between Jan. 1, 2019 and Oct. 19, 2021, for a market research analyst.
- USCIS denied the petition based on a finding that the [Occupational Outlook Handbook \(OOH\)](#) entry for a market research analyst did not establish that the occupation is a specialty occupation, and thus did not satisfy 8 CFR 214.2(h)(4)(iii)(A)(1).
- If not for this finding, the petition would have been approved.
- There is any amount of time remaining on the period specified in the certified Labor Condition Application (LCA) originally submitted with the underlying Form I-129 at the time that the Form I-290B is filed.

Class members whose eligible Form I-129 was denied may submit their Form I-290B (without fee) on or before April 26, 2022, to have their reopening request and, if eligibility is established, their underlying I-129 H-1B petition adjudicated per the terms of the settlement agreement.

USCIS will make a decision on all eligible, timely-filed reopening requests within 90 days of our receipt of the physical file at the adjudicating office. USCIS will attempt to prioritize reopening requests for petitions

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with LCAs expiring less than 90 days after the Form I-290B is properly filed with USCIS.

If we determine that the underlying petition is not eligible for this reopening process, in accordance with the bullets above (for example, you are not a class member eligible to submit a Form I-290B under the settlement agreement), we will reject the Form I-290B.

Filing Instructions

All Forms I-290B must be submitted to the Nebraska Service Center, on or before April 26, 2022, at the addresses below.

USPS	FedEx, UPS, and DHL Deliveries
USCIS Nebraska Service Center Attn: Madkudu Project P.O. Box 87129 Lincoln, NE 68701	USCIS Nebraska Service Center Attn: Madkudu Project 850 'S' Street Lincoln, NE 68508

When submitting Form I-290B, you should:

1. Include a cover sheet to clearly identify that the Form I-290B is filed by a claimed member of the class.
2. Indicate on the cover sheet and Form I-290B the name of the office (name of the Service Center or Administrative Appeals Office (AAO)) that made the last adverse decision.
3. Demonstrate class membership by submitting a copy of USCIS' denial of the underlying H-1B petition (if you appealed to, and had your appeal dismissed by the AAO, you should submit a copy of the AAO decision instead of, or in addition to, the service center denial). The denial of the original H-1B petition should show that:
 - o The petition was filed on or after Jan. 1, 2019, through Oct. 19, 2021, (for cases in which the denial does not include the filing date of the petition, you should submit a copy of USCIS' receipt notice for the petition).
 - o USCIS found that the job fell within the market research analyst occupation;
 - o USCIS considered the OOH entry for market research analysts;
 - o USCIS found that the market research analyst occupation was not a specialty occupation under the first regulatory criterion at 8 CFR 214.2(h)(4)(iii)(A)(1); and
 - o The sole basis for the denial was that the position was not within a specialty occupation.
4. Demonstrate (for example, by submitting a copy of the LCA filed with the denied petition) that there is any amount of time remaining on the period specified in the certified LCA at the time that the I-290B is filed.
5. State in the reopening request that you request reopening.
6. Provide a receipt number for the underlying Form I-129 petition.
7. Confirm that the offer of employment as stated in the underlying Form I-129 petition remains valid.
8. Indicate if you want a new start and/or end date for the validity period (as long as the new date(s) falls within the period in the certified LCA previously submitted with the petition).

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