

Mary Kenney (DC #1044695)*
c/o American Immigration Council
1331 G Street NW, Suite 200
Washington, DC 20005
Telephone: (617) 819-4681
Email: mary@immigrationlitigation.org

Zachary Nightingale (CA #184501)
Van Der Hout LLP
180 Sutter Street, Suite 500
San Francisco, CA 94104
Telephone: (415) 981-3000
Facsimile: (415) 981-3003
Email: ndca@vblaw.com

Counsel for Plaintiffs MadKudu Inc., Quick Fitting, Inc., 2nd Street USA, Inc., and
Hanguang International Inc.

(Additional Counsel for Plaintiffs Listed on the Following Page)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MADKUDU INC.; QUICK FITTING, INC.;
2nd STREET USA, INC.; AND HANGUANG
INTERNATIONAL INC., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

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

Defendants.

Case No. 5:20-cv-02653-SVK

**AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

**CLASS ACTION
Immigration Case**

1 *Plaintiffs' counsel, continued from first page:*

2
3 Leslie K. Dellon (DC #250316)*
4 American Immigration Council
5 1331 G Street NW, Suite 200
6 Washington, DC 20005
7 Telephone: (202) 507-7530
8 Facsimile: (202) 742-5619
9 Email: ldellon@immcouncil.org

10 Jesse M. Bless (MA BBO #660713)*
11 American Immigration Lawyers Association
12 1331 G Street NW, Suite 300
13 Washington, DC 20005
14 Telephone: (781) 704-3897
15 Email: jbless@aila.org

16 Jeff Joseph (CO #28695)*
17 Joseph & Hall, P.C.
18 12203 East Second Avenue
19 Aurora, CO 80011
20 Telephone: (303) 297-9171
21 Email: jeff@immigrationissues.com

22 Charles H. Kuck (GA #429940)*
23 Kuck Baxter Immigration LLC
24 365 Northridge Road, Suite 300
25 Atlanta, GA 30350
26 Telephone: (404) 816-8611
27 Email: CKuck@immigration.net

Counsel for Plaintiffs MadKudu Inc., Quick Fitting, Inc., 2nd Street USA, Inc., and Hanguang International Inc.

**Admitted Pro Hac Vice*

INTRODUCTION

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

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

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

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

1 8. This case arises under the INA, 8 U.S.C. § 1101 *et seq.*, and the APA, 5 U.S.C.
2
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

7
8 9. Venue in this judicial district is proper under 28 U.S.C. § 1391(e)(1)(C) because
9
10 Defendants are a U.S. agency and an officer of a U.S. agency acting in his official capacity,
11 Plaintiff MadKudu Inc. resides in this District, and no real property is involved in this action.

INTRADISTRICT ASSIGNMENT

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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17
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.
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11 14. Plaintiff 2nd Street USA, Inc. operates and manages six second-hand clothing
12 retail stores, one in New York and the others in Southern California, with headquarters in Los
13 Angeles, California. 2nd Street USA filed an H-1B petition for a position in the market research
14 analyst occupation on or about April 11, 2019, which Defendant USCIS denied on September
15 12, 2019 for, inter alia, failing to demonstrate that the position satisfied 8 C.F.R.
16 § 214.2(h)(4)(iii)(A)(1) (2020), the first regulatory test for a specialty occupation.
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18 15. Plaintiff Hanguang International Inc. is an educational consulting services
19 company headquartered in New York, New York. It provides services to Chinese students
20 already studying in the United States and those who are considering this option. It also provides
21 services to an affiliated company in China. Hanguang International filed an H-1B petition for a
22 position in the market research analyst occupation on or about April 2, 2019, which Defendant
23 USCIS denied on November 1, 2019 for, inter alia, failing to demonstrate that the position
24 satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) (2020), the first regulatory test for a specialty
25 occupation.
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27

1 16. Defendant USCIS is a component of the Department of Homeland Security,
2 6 U.S.C. § 271, and an agency within the meaning of the APA, 5 U.S.C. § 551(1). USCIS is
3 responsible for adjudicating immigration benefits, including H-1B petitions. USCIS denied
4 Plaintiffs' H-1B petitions.

5 17. Defendant Kenneth T. Cuccinelli is, at the time this Complaint is filed, the Senior
6 Official Performing Duties of the Director, as the position of USCIS Director remains vacant. In
7 this position, he is responsible for overseeing the adjudication of immigration benefits and
8 establishing and implementing governing policies. The USCIS Director has ultimate
9 responsibility for the adjudication of H-1B petitions. Defendant Cuccinelli is sued in his official
10 capacity.
11

12 **OVERVIEW OF THE LAW AND ADMINISTRATIVE**
13 **DECISIONMAKING PROCESS**

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

17 19. A U.S. employer must follow a multi-step, two-agency process to obtain an H-1B
18 classification for a position it seeks to fill with a foreign worker. First, it must file a Labor
19 Condition Application with the U.S. Department of Labor in which it attests to standards to
20 which it will adhere. On this application, the employer must identify the Standard Occupational
21 Classification (SOC) code and occupational title of the position it seeks to fill. The SOC system
22 is a federal statistical standard used by federal agencies to classify workers into occupational
23 categories for the purpose of collecting, calculating, or disseminating data.
24

25 20. Upon the Department of Labor's certification of the Labor Condition Application,
26 the U.S. employer will file it and an H-1B petition with Defendant USCIS. In its H-1B petition,
27

1 the U.S. employer petitioner must demonstrate by a preponderance of the evidence that the
2 position it seeks to fill is in a specialty occupation.

3 21. A “specialty occupation” is one that requires the “(A) theoretical and practical
4 application of a body of highly specialized knowledge, and (B) attainment of a bachelor’s or
5 higher degree in the specific specialty (or its equivalent) as a minimum for entry into the
6 occupation in the United States.” 8 U.S.C. § 1184(i)(1).

7 22. The regulatory definition of “specialty occupation” first repeats the statutory
8 definition and then provides a non-exhaustive list of fields as examples of specialty occupations:
9

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

17 8 C.F.R. § 214.2(h)(4)(ii) (2020).

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

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

24 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) (2020).¹ Defendant USCIS interprets this test as consistent with

25 8 U.S.C. § 1184(i)(1) only if the bachelor’s or higher degree is in a “specific specialty.”
26
27

28 ¹ The other three tests are:

29 (2) The degree requirement is common to the industry in parallel positions among similar
30 organizations or, in the alternative, an employer may show that its particular position is
31 so complex or unique that it can be performed only by an individual with a degree;

32 (3) The employer normally requires a degree or its equivalent for the position; or

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

25. After identifying the occupation within which the position falls, Defendant USCIS consults the OOH with respect to that position. The OOH, updated every two years, provides profiles of hundreds of occupations that represent most, though not all, jobs in the United States. U.S. Bureau of Labor Statistics, *Occupational Information Contained in the OOH* (Jan. 16, 2020), <https://www.bls.gov/ooh/about/occupational-information-included-in-the-ooh.htm>. Among other data, each occupational profile describes the "typical duties performed by the occupation" and the "typical education and training needed to enter the occupation." *Id.* Defendant USCIS recognizes the OOH as an authoritative source on the duties and educational requirements of the occupations profiled within it.

26. If the occupation the petitioning employer designated in the Labor Condition Application is in the OOH, Defendant USCIS will compare the H-1B petitioning employer's job duties and education requirements with the OOH entry. Where Defendant USCIS decides that the petitioning employer has correctly identified the job as being within the specified occupation, it relies upon the OOH to determine whether to approve the H-1B petition under the first

(4) The nature of the specific duties are so specialized and complex that knowledge 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 regulatory test—that is, whether the OOH establishes that a bachelor’s degree or higher in a
 2 specific specialty or its equivalent is the normal minimum prerequisite for entry into the
 3 occupation.

4 27. The OOH entry for market research analyst contains the following description of
 5 the educational requirements for entry into the occupation:

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

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

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

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

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

21 28. The OOH establishes that a market research analyst satisfies the first regulatory
 22 test for a specialty occupation. First, by establishing that market research analysts “typically
 23 need” a bachelor’s degree, with some jobs requiring a master’s degree, it demonstrates that a
 24 bachelor’s degree is “normally” the minimum degree requirement for the occupation. 8 C.F.R.
 25 § 214.2(h)(4)(iii)(A)(1) (2020). Second, the OOH also establishes that entry into the occupation
 26 “typically” requires a bachelor’s degree in “market research or a related field,” and identifies the
 27 coursework that is “essential” for this occupation—statistics, research methods and marketing—,
 thus demonstrating that a “body of highly specialized knowledge” is necessary to perform the job

1 of a market research analyst. Combined, this information demonstrates that the degree is in a
2 specific specialty.

3 29. Defendant USCIS has a pattern and practice of erroneously denying H-1B
4 petitions for market research analysts. In its decisions, which routinely employ the same
5 reasoning and general language, Defendant USCIS ignores the OOH's statement: "Market
6 research analysts typically need a bachelor's degree in market research or a related field."
7 Instead, Defendant USCIS finds that the OOH indicates that several degrees or fields of study
8 may qualify a person to perform the duties of a market research analyst, and then erroneously
9 concludes that this indicates that the degree requirement is *not* in a specific specialty. In so
10 deciding, Defendant USCIS erroneously ignores the regulatory term "normally."

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

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

8
9 32. The denials in Plaintiffs’ cases are representative of a pattern and practice of
10 similar USCIS decisions. Plaintiffs know of at least 60 H-1B market research analyst petitions
11 that Defendant USCIS denied in the past three calendar years, employing the same reasoning and
12 similar language in all. On information and belief, these 60 decisions represent only a fraction of
13 Defendant USCIS’ decisions denying market research analyst H-1B petitions on this basis during
14 this period. Moreover, this pattern and practice is continuing. Plaintiffs are aware of 6 decisions
15 issued in the first three months of 2020, in addition to the denials in Plaintiffs MadKudu Inc’s
16 and Quick Fitting, Inc.’s cases, in which Defendant USCIS denied H-1B petitions for market
17 research analyst positions on this same basis. On information and belief, these 6 decisions are
18 only a fraction of the total number of market research analyst H-1B petitions that have been
19 denied by Defendant USCIS on this basis to date in 2020.

20 21 **PLAINTIFFS’ FACTUAL ALLEGATIONS**

22 33. Plaintiff MadKudu Inc. is a marketing analytics software company headquartered
23 in Mountain View, California. Established in 2014, its clients are business-to-business software
24 as a service (SaaS) companies who want an alternative to the incomplete, yet time-intensive
25 manual development of sales leads. MadKudu analyzes a client’s customers and segments sales
26
27

1 leads based on relevant demographic data, such as the lead's title, industry and business size. Its
2 data analysis determines which customers are ready to buy from the client. MadKudu's
3 predictive models adapt automatically based on data, accounting for changes in its clients'
4 products and markets for new customers.

5 34. On or about April 2, 2019, MadKudu filed a petition with Defendant USCIS
6 seeking to employ Rafikah Binte Mohamed Halim in H-1B status in a market research analyst
7 job with the title of product manager. Ms. Mohamed Halim, a national of Singapore, had worked
8 for MadKudu in H-1B² status since June 2018 as product manager. Ms. Mohamed Halim holds
9 a bachelor's degree in Business Administration with specializations in marketing and analytics
10 from the National University of Singapore.

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

15 36. Defendant USCIS denied the petition on February 24, 2020 for failing to
16 demonstrate that the position was a specialty occupation under any of the independent regulatory
17 tests.
18

19 37. Following its pattern and practice, Defendant USCIS determined that Plaintiff
20 MadKudu's petition did not meet the first regulatory test because the OOH did not show that
21 market research analyst positions normally require a minimum of a bachelor's degree or its
22 equivalent in a specific specialty at the entry level. Defendant USCIS stated that "a range of
23
24

25 ² 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 educational credentials may qualify an individual to perform the duties of a Market Research
2 Analysts [sic].”

3 38. In concluding that Plaintiff MadKudu did not meet the first regulatory test,
4 Defendant USCIS ignored entirely the OOH’s statements that “[m]arket research analysts
5 typically need a bachelor’s degree in market research or a related field” and that “[c]ourses in
6 statistics, research methods, and marketing are essential for these workers.”

7
8 39. On May 11, 2020, less than one month after the original complaint in this action
9 was filed, Defendant USCIS approved Plaintiff MadKudu Inc.’s H-1B petition. Defendant
10 USCIS provided no explanation to Plaintiff MadKudu Inc. as to its rationale for reversing its
11 decision.

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

17
18 41. On or about August 20, 2019, Quick Fitting, Inc. filed a petition with Defendant
19 USCIS seeking an extension of Xiaomeng Liu’s H-1B status based on her employment as a
20 market research analyst. It sought to continue to employ Ms. Liu in this position for an additional
21 period with no change in job duties from the H-1B petition previously approved by Defendant
22 USCIS. Ms. Liu, who had been working with Quick Fitting, Inc. in H-1B status since December
23 2012, holds a master’s degree in Business Administration with a marketing concentration from
24 Johnson and Wales University in Providence, Rhode Island.

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

4 43. Defendant USCIS denied the petition on January 23, 2020 for failing to
5 demonstrate that the position was a specialty occupation under any of the independent regulatory
6 tests.

7 44. Following its pattern and practice, Defendant USCIS determined that Plaintiff
8 Quick Fitting, Inc.'s petition did not meet the first regulatory test because the OOH did not show
9 that market research analyst positions normally require a minimum of a bachelor's degree or its
10 equivalent in a specific specialty at the entry level. Defendant USCIS noted that "[a] range of
11 educational qualifications such as business administration and the social sciences may qualify an
12 individual to perform the duties of a Market Research Analyst and Marketing Specialist."
13 Defendant USCIS concluded that the "requirement of a degree with a generalized title, such as
14 business administration or liberal arts, without further specification, does not establish
15 eligibility."
16

17 45. In concluding that Plaintiff Quick Fitting, Inc. did not meet the first regulatory
18 test, 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 46. On May 11, 2020, less than one month after the original complaint in this action
23 was filed, Defendant USCIS approved Plaintiff Quick Fitting, Inc.'s H-1B petition. Defendant
24 USCIS provided no explanation to Plaintiff Quick Fitting, Inc. as to its rationale for reversing its
25 decision.
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27

1 47. Plaintiff 2nd Street USA, Inc. operates and manages six retail clothing stores in
2 the United States: five in Southern California and one in New York City. Established in 2015, it
3 is part of the Geo Group, which is known in Japan for rebranding the Japanese culture of reusing,
4 recycling, and refurbishing. Plaintiff 2nd Street USA's retail stores offer name-brand
5 merchandise from many in-demand brands, such as Diesel and Theory. The stores also offer a
6 large variety of special and limited-edition name-brand sneakers. 2nd Street USA is unusual in
7 the types of items it will accept in-store from customers for resale. Items purchased by the stores
8 are either resold in-store or to a third party as recyclable material. Customers also can shop
9 online through 2nd Street USA's website.
10

11 48. On or about April 11, 2019, 2nd Street USA filed an H-1B petition with USCIS
12 seeking to employ Kankan Yang in H-1B status as a market research analyst. 2nd Street USA
13 requested a change of status for Ms. Yang, who worked for the company as a market research
14 analyst, and continues to do so, through Optional Practical Training (OPT). OPT is authorized by
15 USCIS to permit international students to gain work experience related to their field of study.
16 Ms. Yang holds a Master of Business Administration from Brandeis University in Waltham,
17 Massachusetts, where she completed the MBA International Business program with
18 specializations in Data Analytics and in Marketing.
19

20 49. 2nd Street USA attached to its H-1B petition a Labor Condition Application
21 certified by the Department of Labor, which identified the position by SOC Code 13-1161, an
22 occupation entitled Market Research Analysts and Marketing Specialists
23

24 50. Defendant USCIS denied the petition on September 12, 2019 for failing to
25 demonstrate that the position was a specialty occupation under any of the independent regulatory
26 tests.
27

1 51. Following its pattern and practice, Defendant USCIS determined that Plaintiff 2nd
2 Street USA's petition did not meet the first regulatory test because the OOH did not show that
3 market research analyst positions normally require a minimum of a bachelor's degree or its
4 equivalent in a specific specialty at the entry level. 2nd Street USA included the OOH entry for
5 market research analysts as evidence that market research analyst is a specialty occupation. In its
6 denial, USCIS stated: "The petitioner has clearly defined that the proffered position falls under
7 the Market Research Analyst as described in the OOH. As stated above, you have not shown that
8 the proffered position requires a bachelor's or higher degree in a specific specialty or its
9 equivalent." USCIS also concluded that a "general-purpose degree, such as a degree in business
10 administration ... without more" is not acceptable for a specialty occupation. Despite stating that
11 2nd Street USA "has clearly defined" its job as falling under market research analyst as
12 described in the OOH, USCIS also claimed that the company's job duties were too generalized to
13 determine if the job was in a specialty occupation.
14

15 52. In concluding that Plaintiff 2nd Street USA, Inc. did not meet the first regulatory
16 test, Defendant USCIS ignored entirely the OOH's statements that "[m]arket research analysts
17 typically need a bachelor's degree in market research or a related field" and that "[c]ourses in
18 statistics, research methods, and marketing are essential for these workers."
19

20 53. Plaintiff Hanguang International Inc., established in 2016, provides educational
21 consulting services to Chinese students who either are studying in the United States or who want
22 to study in this country. Hanguang International has partnered with ten top Chinese universities
23 where students can take for-credit courses in English taught by top professors from the United
24 States and other countries. Plaintiff Hanguang International is the consulting, business
25 development and education-provider arm of its affiliate, Hanshengguanghua Culture &
26
27

1 Education Co., Ltd., a leading education consulting service organization established in China in
2 2011. Hanguang's services to its affiliate include researching and leading the development of
3 cooperative agreements between U.S. and Chinese higher education institutions, developing
4 guidance to Chinese students and Chinese universities, and providing educational opportunities
5 to Chinese students on vacation breaks in China from their university programs in the United
6 States.

7
8 54. On or about April 2, 2019, Plaintiff Hanguang International Inc. filed a petition
9 with Defendant USCIS seeking to employ Xianglun Meng in H-1B status as a market research
10 analyst. Mr. Meng has a bachelor's degree in Business Administration from the University of
11 Cincinnati, in Ohio and a Master of Business Administration from the University of LaVerne, in
12 California.

13 55. Plaintiff Hanguang International Inc. attached to its H-1B petition a Labor
14 Condition Application certified by the Department of Labor, which identified the position by
15 SOC Code 13-1161, an occupation entitled Market Research Analysts and Marketing Specialists.
16

17 56. Defendant USCIS denied the petition on November 1, 2019 for failing to
18 demonstrate that the position was a specialty occupation under any of the independent regulatory
19 tests.

20 57. Following its pattern and practice, Defendant USCIS determined that Plaintiff
21 Hanguang International Inc.'s petition did not meet the first regulatory test because the OOH did
22 not show that market research analyst positions normally require a minimum of a bachelor's
23 degree or its equivalent in a specific specialty at the entry level. Defendant USCIS noted that "a
24 range of educational credentials may qualify an individual to perform the duties of a Market
25 Research Analyst."
26

1 All U.S. employers who in 2019 filed, or in the future will file, a petition (Form
2 I-129 or any successor) with USCIS for an H-1B classification under 8 U.S.C.
3 § 1101(a)(15)(H)(i)(b) for a market research analyst where:

- 4 • USCIS denied or will deny the petition solely or in part based on a
5 finding that the OOH entry for market research analyst does not establish
6 that the occupation is a specialty occupation, and thus does not satisfy
7 8 C.F.R. § 214.2(h)(4)(iii)(A)(1); and
- 8 • But for this finding, the petition would be approved.

9 62. The proposed class is so numerous that joinder of all members is impracticable.
10 Plaintiffs are not aware of the precise number of potential class members but reasonably estimate
11 that the number of class members totals at least 40; Defendants, however, are in a position to
12 identify this number. Upon information and belief, there are many more than two dozen current
13 members of the class and an unknown number—likely in the hundreds—of future members.

14 63. Defendant USCIS denied an average of 20 H-1B petitions for market research
15 analysts in each of the last three full calendar years (between 17 and 22 each year) and is on
16 track to deny at least that many in 2020—having denied at least 6 such petitions, in addition to
17 Plaintiffs MadKudu Inc. and Quick Fitting, Inc.’s petitions, in the first three months of the year.
18 All such denials found that the OOH did not establish that a market research analyst was a
19 specialty occupation under the first regulatory test. All such denials contained the same or
20 similar language as that found in Plaintiffs’ denials, along with the same reasoning.

21 64. On information and belief, these decisions represent only a fraction of the H-1B
22 petitions for market research analysts denied on this basis each year. Other than the decisions in
23 Plaintiffs’ cases, these decisions were issued by Defendant USCIS’ Administrative Appeals
24 Office (USCIS AAO) and posted on electronic legal research sites. They are the only USCIS
25 decisions that are publicly available. Only a small fraction of H-1B petitioners whose petitions
26 are denied appeal the denial to USCIS’ AAO. Consequently, it is reasonable to infer that these
27 decisions represent only a fraction of the H-1B petitions for market research analysts that were

1 denied during the years in question. These numbers, thus, support a reasonable estimate that
2 there are at least several dozen current putative class members, and likely many more. This
3 reasonable estimate of current class members coupled with the existence of unknown future class
4 members makes joinder impracticable.

5 65. Questions of law and fact common to the proposed class predominate over any
6 questions affecting only the individually named Plaintiffs. These include, but are not limited to,
7 whether Defendant USCIS misinterprets the OOH entry for market research analyst; whether
8 Defendant USCIS misinterprets 8 U.S.C. § 1184(i)(1) and 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)
9 (2020); whether Defendant USCIS has a pattern and practice of denying the H-1B petitions of
10 Plaintiffs and putative class members on the basis alleged in this suit; and whether its denial of
11 Plaintiffs' and putative class members' H-1B petitions violates the APA in that it is arbitrary and
12 capricious, and contrary to the INA and its implementing regulations. Resolution of these
13 common questions will resolve the entire case.
14

15 66. Plaintiffs' claims are typical of the claims of the proposed class insofar as they
16 have been subject to Defendant USCIS' pattern and practice of denying H-1B petitions for
17 market analyst positions under the first regulatory test based upon a misinterpretation of the
18 statute, regulations and the OOH.
19

20 67. Plaintiffs will fairly and adequately protect the interests of the proposed class
21 members because they seek relief on behalf of the class as a whole and have no interest
22 antagonistic to other class members.
23

24 68. Plaintiffs are represented by competent counsel with extensive experience in
25 complex class actions and extensive knowledge of immigration law.
26
27

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

5 **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

6 70. An actual and substantial controversy exists between the Plaintiffs and proposed
7 class members and the Defendants as to their respective rights and obligations. Plaintiffs contend
8 that Defendants' actions violate Plaintiffs' rights and the rights of the proposed class members.
9

10 71. Defendants' pattern and practice of misinterpreting the OOH and misapplying the
11 law forecloses Plaintiffs and the class they seek to represent from demonstrating, absent
12 litigation, that their jobs are in a specialty occupation based on the first regulatory test. Where the
13 OOH demonstrates that a bachelor's or higher degree in a specific specialty is normally the
14 minimum requirement for entry in the occupation that includes the job the H-1B petition seeks to
15 fill, no further evidence is needed. This is the case with respect to the OOH entry for market
16 research analyst.
17

18 72. Plaintiffs and proposed class members have suffered a legal wrong and have been
19 adversely affected or aggrieved by agency action for which there is no adequate remedy at law.
20 Defendants' policy and practice of denying H-1B petitions for market research analysts under the
21 first regulatory test constitutes final agency action. There are no administrative remedies that
22 Plaintiffs must exhaust.
23

24 73. Based on the foregoing, the Court should grant declaratory and injunctive relief
25 under 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 701-706.
26
27

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

74. Plaintiffs re-allege and incorporate by reference, as if fully set forth herein, the allegations in paragraphs 1-73 above.

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

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

77. Although recognizing the OOH as authoritative for purposes of determining whether an occupation profiled within it satisfies the first regulatory test for a specialty occupation, Defendant USCIS routinely misreads the OOH's profile for market research analyst. Simultaneously, Defendant USCIS misinterprets the meaning of the statutory term "specific specialty," 8 U.S.C. § 1184(i)(1), ignores entirely the regulatory term "normally," 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) (2020), and misapplies the statute and the regulation. But for Defendant's violation of the law, Defendant USCIS would find that Plaintiffs and putative class members satisfy the first regulatory test for demonstrating that their jobs are in a specialty occupation.

78. Defendants' pattern and practice of misinterpreting the OOH and misinterpreting and misapplying 8 U.S.C. § 1184(i)(1) and C.F.R. § 214.2(h)(4)(iii)(A)(1) (2020) renders its

denials of Plaintiffs' and putative class members' H-1B petitions arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law. *See* 5 U.S.C. § 706(2)(A).

COUNT TWO

(Violation of the INA and its Implementing Regulations)

79. Plaintiffs re-allege and incorporate by reference, as if fully set forth herein, the allegations in paragraphs 1-73 above.

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

81. Although recognizing the OOH as authoritative for purposes of determining whether an occupation profiled within it satisfies the first regulatory test for a specialty occupation, Defendant USCIS routinely misreads the OOH's profile for market research analyst. Simultaneously, Defendant USCIS misinterprets the meaning of the statutory term "specific specialty," 8 U.S.C. § 1184(i)(1), ignores the regulatory term "normally," 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) (2020), and misapplies the statute and the regulation. But for Defendant's violation of the law, Defendant USCIS would find that Plaintiffs and putative class members satisfy the first regulatory test for demonstrating that their jobs are in a specialty occupation.

82. Defendants' pattern and practice of misinterpreting the OOH and misinterpreting and misapplying 8 U.S.C. § 1184(i)(1) and C.F.R. § 214.2(h)(4)(iii)(A)(1) (2020) renders their denial of Plaintiffs' and putative class members' H-1B petitions contrary to law. An actual

1 controversy exists between the parties over which this Court may issue a declaratory judgment,
2 specifying the legal rights of the Plaintiffs and putative class members and the legal obligations
3 of the Defendants, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

4 **REQUEST FOR RELIEF**

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

- 6 (1) Assume jurisdiction over this matter;
- 7 (2) Certify the case as a class action, as proposed herein;
- 8 (3) Appoint Plaintiffs as representatives of the class and Plaintiffs' counsel as class
9 counsel;
- 10 (4) Set aside and vacate the denials of Plaintiffs 2nd Street USA, Inc.'s and
11 Hanguang International, Inc.'s and proposed class members' H-1B petitions;
- 12 (5) Declare that Defendants have unlawfully engaged in a pattern and practice of
13 misinterpreting the OOH and misinterpreting and misapplying 8 U.S.C. § 1184(i)(1) and
14 8 C.F.R. § 214.2(h)(4)(iii)(A)(1);
- 15 (6) Enjoin Defendants from violating the plain meaning of "typically" as used in the
16 OOH as anything other than "normally" when determining whether a U.S. employer has met the
17 first regulatory test for demonstrating that its job is in a specialty occupation;
- 18 (7) Award Plaintiffs' counsel reasonable attorneys' fees under the Equal Access to
19 Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and
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(8) Grant such other and further relief as the Court deems just, equitable and appropriate.

Respectfully submitted this 20th day of July, 2020,

/s/ Mary Kenney

Mary Kenney (DC #1044695)*
c/o American Immigration Council
1331 G Street NW, Suite 200
Washington, DC 20005
Phone: (617) 819-4681
Email:
mary@immigrationlitigation.org

Zachary Nightingale (CA #184501)
Van Der Hout LLP
180 Sutter Street, Suite 500
San Francisco, CA 94104
Phone: (415) 981-3000
Facsimile: (415) 981-3003
Email: ndca@vblaw.com

Leslie K. Dellon (DC #250316)*
American Immigration Council
1331 G Street NW, Suite 200
Washington, DC 20005
Phone: (202) 507-7530
Facsimile: (202) 742-5619
Email: ldellon@immcouncil.org

Jesse M. Bless (MA BBO # 660713)*
American Immigration Lawyers
Association
1331 G Street NW, Suite 300
Washington, DC 20005
Phone: (781) 704-3897
Email: jbless@aila.org

Jeff Joseph (CO #28695)*
Joseph & Hall, P.C.
12203 East Second Avenue
Aurora, CO 80011
Phone: (303) 297-9171
Email: jeff@immigrationissues.com

Charles H. Kuck (GA #429940)*
Kuck Baxter Immigration LLC
365 Northridge Road, Suite 300
Atlanta, GA 30350
Phone: (404) 816-8611
Email: CKuck@immigration.net

Counsel for Plaintiffs

* *Admitted Pro Hac Vice*