



## Guidance for U.S. Employers with Rejected H-1B Petitions Filed After Oct. 1, 2020 with an Intended Employment Start Date After Oct. 1.

The American Immigration Council (the Council) and its partner law firms Mintz Levin, Cohn, Ferris, Glovsky & Popeo, PC; Joseph & Hall PC; Meyner and Landis LLP; Barnes & Thornburg LLP; and Driggs Immigration Law are pleased to provide guidance and a sample complaint for attorneys with similarly-situated clients whose H-1B petitions were rejected for failing to back-date the start date to October 1, 2020. The Council and partners filed a [lawsuit](#) in the District of Massachusetts on behalf of seven U.S. companies on March 11, 2021. The plaintiffs sued U.S. Citizenship and Immigration Services (USCIS) for wrongly rejecting H-1B petitions that listed a start date after October 1, 2020. On April 29, 2021, the plaintiffs voluntarily dismissed the lawsuit after USCIS allowed plaintiffs to refile the H-1B petitions. This guidance and sample complaint is intended for U.S. employers who received similar rejections.

This sample complaint may be helpful if the U.S. employer's H-1B petition rejection meets the following conditions:

- The registration was selected in the second round (i.e., the registration selection notice was received on or around Aug. 14, 2020).
- The H-1B petition was filed with U.S. Citizenship and Immigration Services (USCIS) after Oct. 1, 2020.
- The start date for intended employment listed in the H-1B petition was after Oct. 1, 2020.
- The validity period of the certified Labor Condition Application submitted with the H-1B petition included the start date for intended employment.
- The only reason USCIS rejected the H-1B petition was that the start date for intended employment was a date after October 1, 2020.

The sample complaint must be modified before it can be filed on behalf of another U.S. employer. (The sample is for multiple plaintiffs, anticipating that a practitioner may file on behalf of several clients.) Practitioners must independently assess whether jurisdiction and venue are proper and whether they have complied with the local rules of the federal district court where they intend to file. Practitioners also must state the facts and relief requested as applicable to their client's H-1B petition. Practitioners must make sure that each paragraph of the complaint is accurate as to their client's circumstances.

For more guidance on jurisdiction, venue and claims under the Administrative Procedure Act, please see the Council's practice advisories: "[Litigation for Business Immigration Practitioners](#)" and "[Immigration Lawsuits and the APA: The Basics of a District Court Action.](#)"

By providing this sample complaint, the Council is not suggesting that only U.S. employers with registrations selected in the second round should file suit. However, this sample complaint contains facts, law, and a statement of claims based on a second-round registration selection and H-1B petition filed after October 1.

Please contact the American Immigration Council at [clearinghouse@immcouncil.org](mailto:clearinghouse@immcouncil.org) if you have questions.