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Services

[Home](#) > [News](#) > [Alerts](#) > USCIS Temporarily Suspends Biometrics Requirement for Certain Form I-539 Applicants

USCIS Temporarily Suspends Biometrics Requirement for Certain Form I-539 Applicants

Effective May 17, 2021, U.S. Citizenship and Immigration Services will temporarily suspend the biometrics submission requirement for certain applicants filing [Form I-539, Application To Extend/Change Nonimmigrant Status](#), requesting an extension of stay in or change of status to H-4, L-2, and E nonimmigrant status. USCIS will allow adjudications for those specific categories to proceed based on biographic information and related background checks, without capturing fingerprints and a photograph. This suspension will apply through May 17, 2023, subject to affirmative extension or revocation of the suspension period by the USCIS director.

This temporary suspension will apply to applicants filing Form I-539 requesting the following:

- Extension of stay in or change of status to H-4 nonimmigrant status;
- Extension of stay in or change of status to L-2 nonimmigrant status;
- Extension of stay in or change of status to E-1 nonimmigrant status;
- Extension of stay in or change of status to E-2 nonimmigrant status (including E-2C (E-2 CNMI Investor)); or
- Extension of stay in or change of status to E-3 nonimmigrant status (including those selecting E-3D).

This suspension will apply only to the above categories of Form I-539 applications that are either:

- Pending as of May 17, 2021, and have not yet received a biometric services appointment notice; or
- New applications postmarked or submitted electronically on or after May 17, 2021.

However, USCIS retains discretion on a case-by-case basis to require biometrics for applicants who meet the criteria above, and any applicant may be scheduled for an application support center (ASC) appointment to submit biometrics.

Form I-539 applicants who have already received a biometric services appointment notice should still attend their scheduled appointment.

Effective May 17, 2021, Form I-539 applicants meeting the criteria above are not required to submit the \$85 biometric services fee for Form I-539 during the suspension period. USCIS will return a biometric services fee if submitted separately from the base fee. USCIS will allow a short grace period during which USCIS will

not reject Form I-539 filed with the biometric services fee. USCIS will begin rejecting paper Form I-539 applications postmarked May 27, 2021, or later (while this suspension of the biometrics requirement is in effect), if applicants meeting the above criteria submit a single payment covering both the filing fee and the \$85 biometrics services fee. If USCIS rejects the paper application because the applicant included the \$85 biometrics service fee after the grace period, the applicant will need to re-file Form I-539 without the biometric services fee.

Background

Beginning March 2019, USCIS required certain Form I-539 applicants and co-applicants to appear in person at an ASC to submit their biometrics. In March 2020, USCIS temporarily suspended in-person services at its field offices, asylum offices, and ASCs to help slow the spread of COVID-19. Although ASCs have since reopened to the public, they are not yet operating at full appointment capacity due to necessary COVID-19 health and safety protocols. These temporary closures and capacity limitations at the ASCs, accompanied by other processing delays, created a substantial volume of cases awaiting biometrics appointments at ASCs.

The significant volume of pending cases related to Form I-539 are particularly impacting the timeframe for USCIS to adjudicate the related employment authorization applications ([Form I-765, Application for Employment Authorization](#)) for H-4 nonimmigrants (spouses and children of H-1B nonimmigrants), L-2 nonimmigrants (spouses and children of L-1 nonimmigrants), and certain E nonimmigrants (dependents of E-1, E-2 and E-3 principal nonimmigrants).

While DHS regulations provide for an automatic extension of employment authorization for certain EAD renewals, H-4, L-2, and E nonimmigrants are not included in the applicable automatic renewal provisions. Form I-765 cannot be approved until after the dependent spouse's underlying H-4, L-2, or E nonimmigrant status is granted or extended upon approval of Form I-539.

Suspending biometrics requirements for 24 months for H-4, L-2, and E nonimmigrants filing Form I-539 who meet the criteria above will provide sufficient time for USCIS to address the processing delays that have been exacerbated by limited ASC capacity due to COVID-19 health and safety protocols. USCIS has decided to suspend biometrics submission for all H-4, L-2, and E nonimmigrants (in other words, both dependent spouses and children) filing Forms I-539 rather than limiting the suspension to only those dependent spouses who are also filing Form I-765 because it would not be operationally feasible to treat dependent children differently from dependent spouses. USCIS will continue to monitor ASC capacity and adjudication processing times for Form I-539 and Form I-765 and may adjust or extend this suspension as circumstances change.

USCIS has general authority to require the submission of biometrics from applicants, petitioners, and beneficiaries for immigration or naturalization benefits or requests. The Immigration and Nationality Act (INA) at section 103(a), 8 U.S.C. 1103(a), provides general authority for DHS to collect or require submission of biometrics. DHS regulations provide specific authority to require biometrics submission at 8 CFR 103.2(b)(9) and 103.16.

This alert is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law, or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

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