

Mobility: immigration alert

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United States

USCIS temporarily suspends biometrics requirement for L-2 and H-4 applicants

Executive summary

As I-539 processing times continue to grow, U.S. Citizenship and Immigration Services (“USCIS”) has made a key adjustment to its adjudication process. Effective 17 May 2021, USCIS temporarily suspended the biometrics submission requirement for certain applicants filing Form I-539 requesting an extension of stay or change of status in multiple nonimmigrant classes, including H-4 and L-2 non-immigrants. These cases will now be processed on the basis of biographic information and related background checks, circumventing the need for fingerprints and photographing. This suspension will be in effect until 17 May 2023. USCIS has stated that it will continue to monitor processing times and may adjust or extend this suspension as circumstances change.

Background

Since March 2019, USCIS has required a biometrics appointment for beneficiaries filing form I-539, Application to Extend/Change nonimmigrant status. At these biometrics appointments, the U.S. government takes fingerprints, pictures, and signatures in order to conduct routine background checks for identification purposes. For those individuals applying with USCIS, this meant government filing fees of \$85 per applicant, as well as increasingly longer processing times, as USCIS attempted to schedule biometrics appointments while adhering to strict quarantine guidelines over the course of the last 15 months.

With Application Support Centers (“ASC”) operating at limited capacity, the volume of pending cases related to

Form I-539, notably Form I-765, Application for Employment Authorization, has grown immensely, prompting USCIS to issue the suspension to the biometrics requirement.

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

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

Analysis

The suspension of the biometrics requirement will play two key roles for those filing Form I-539. First, the suspension will also temporarily reduce the total filing fee for form I-539, as the \$85 biometrics fee required for all applicants of Form I-539 will no longer be collected. The second consequence of this suspension is that it is likely to reduce processing times for Form I-539 and I-765 over the next several months. As extension of stay filings for H-4 and L-2 dependents has ballooned to over 9-12 months, and I-765 processing is currently in a 7-13 month processing window, USCIS has decided to implement this suspension to shorten these long delays in processing.



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What this means

At a practical level, the suspension of the biometrics requirement for applicants filing I-539 is a positive change. The lengthy processing times of Form I-539 have created a major backlog in applications for employment authorization under Form I-765. While beneficiaries of Form I-539 often remain in a period of authorized stay while their cases process with USCIS, those applying for Form I-765 have experienced major gaps in work authorization forcing some applicants to leave their employers permanently. The omission of the \$85 fee for all I-539 applicants will be a positive consequence of the suspension. Processing times are likely to shrink over the next few months.

We will continue to monitor and review future developments. For additional information, or if you wish to discuss this further, please contact your EY LLP professional.

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