

# GMS Flash Alert



## Immigration Edition

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# United States - USCIS to Suspend Biometrics for Certain I-539 Applicants

On May 3, 2021, U.S. Citizenship and Immigration Services (USCIS) issued a declaration in pending federal litigation that it will temporarily suspend the biometrics requirement for certain applicants who submit a Form I-539, *Application to Extend/Change Nonimmigrant Status*.<sup>1</sup>

Referring to a reduction in its operational capacity due to COVID-19, USCIS will suspend biometrics submission requirements for applicants in the H-4, L-2, E-1, E-2, and E-3 dependent spousal visa categories. This suspension will start on May 17, 2021, and will be in effect for at least two years. Specifically, this biometrics suspension will apply to cases where the Form I-539 application remains pending with USCIS on May 17, 2021, and the biometrics appointment has not been scheduled. The biometrics suspension will also apply to new Form I-539 applications submitted on or after May 17, 2021 through May 17, 2023.

It is expected the USCIS will formalize this declaration in a policy update shortly. In the meantime, USCIS will continue to process Form I-539 applications on a “first in, first out” priority basis.

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## WHY THIS MATTERS

The suspension of the biometrics requirement for applications in the H-4, L-2, E-1, E-2, and E-3 dependent visa categories will not only alleviate the lengthy government processing times, but also allow eligible individuals in these visa categories to more readily obtain U.S. work authorization in the form of an Employment Authorization Document (EAD). The biometrics suspension is anticipated to have a tremendous positive impact on U.S. employers and their employees who use EAD dependent work authorization. EAD employees who faced an interruption to their work eligibility can anticipate quicker processing times for work authorization renewal, and their employers are less likely to experience disruptions to their workforce.

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## Background

The Form I-539, *Application to Extend or Change Nonimmigrant Status*, is the application used by dependent spouses and unmarried children of foreign nationals holding employment-based nonimmigrant visa categories such as H-1B Specialty Occupation Workers, L-1 Intracompany Transferees, and E Treaty Traders and Investors.

Since the implementation of the biometrics requirements in March 2019,<sup>2</sup> applicants requesting visa extension or change of status to H-4, L-2, E-1, E-2, and E-3 dependent spousal categories have experienced significantly long processing times for their applications. These processing times were further exacerbated by the COVID-19 health emergency when local USCIS fields offices responsible for collecting biometrics information reduced staffing and limited in-person services. Dependent spouses in the H, L, and E visa categories also commonly concurrently file for Form I-765, *Applications for Employment Authorization* in order to obtain an EAD card permitting employment in the U.S. However, the USCIS can only approve an application for employment authorization only after the Form I-539 has been adjudicated.

The processing delays for the Form I-539 caused by the biometrics requirement meant that the H, L, and E dependent visa applicants who concurrently applied for an EAD would similarly face lengthy processing times on their EAD applications. Further, many who already possessed an employment authorization card experienced a loss of their work eligibility as the Form I-539 and Form I-765 applications remained pending well beyond the expiration of EADs. The loss of U.S. work authorization for impacted dependent visa applicants often meant the loss of employment opportunities or having to take extended periods of absence from work.

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## KPMG NOTE

### Upshot of Suspension of Biometrics Requirement

With the suspension of the biometrics requirement, H, L, and E dependent visa applicants, as well as their U.S. employers, will greatly benefit by having reduced processing times for Form I-539 applications, and associated Form I-765 applications for work authorization, thus mitigating potential gaps in employment.

### Next Steps for Form I-539 Applicants

Form I-539 visa applicants who have received a biometrics appointment notice should continue to attend their scheduled appointment unless further guidance is issued by the USCIS instructing otherwise.

### We Are Monitoring This Development

KPMG Law LLP in Canada is tracking this matter closely and will keep readers of *GMS Flash Alert* posted on any important developments.

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## FOOTNOTES

- 1 Declaration of Acting Associate Director of Service Center Operations, USCIS, in *Edakunni, et al. v. Mayorkas, Secretary of the Department of Homeland Security*, Case No. 21-cv-393-RAJ (May 7, 2021).<sup>1</sup>
- 2 For prior coverage of Form I-539 matters (including biometrics policy), see [\*GMS Flash Alert: 2019-032\*](#) (February 20, 2019).

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## Contact us

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