



Decision Memorandum

TO: Sharon Block
Acting Administrator,
Office of Information and Regulatory Affairs,
Office of Management and Budget

THROUGH: Eric Hysen
Chief Information Officer,
Department of Homeland Security

FROM: Samantha L. Deshommnes
Chief,
Regulatory Coordination Division,
Office of Policy and Strategy,
U.S. Citizenship and Immigration Services,
Department of Homeland Security

SUBJECT: Request for Emergency Office of Management and Budget Paperwork Reduction Act Clearance – I-539, Application to Extend/Change Nonimmigrant Status, OMB Control Number 1615-0003

Purpose: USCIS is requesting emergency approval of this revision of an approved collection of information under 5 CFR 1320.13.

Background: Form I-539 is used by nonimmigrants who wish to apply to U.S. Citizenship and Immigration Services (USCIS) for an extension of stay or a change to another nonimmigrant status. USCIS is removing the biometrics submission requirement for individuals filing Form I-539 requesting an extension of stay in or a change of status to H-4, L-2 or E nonimmigrant status as well as the requirement for a biometrics services fee.

Discussion:

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USCIS is experiencing an unprecedented processing backlog of cases related to Form I-539, especially in the H-4¹, L-2², and certain E³ classifications. Generally, Form I-539 applicants are required to submit biometrics and are scheduled for biometrics appointments at USCIS Application Support Centers (ASCs). Effective March 18, 2020, USCIS suspended in-person services at its field offices, asylum offices, and ASCs to help slow the spread of COVID-19.⁴ Due to these ASC closures, USCIS accrued a backlog of over one million needed biometric collections by end of July, 2020. Although ASCs have since reopened, they are not yet operating at full appointment capacity due to necessary COVID-19 health and safety protocols.⁵ As a result, closures and capacity limitations have led to a continued backlog of cases and delays in intake processing at the USCIS lockbox facilities and biometrics appointments at ASCs.

The delays in I-539 adjudication, in turn, delay the adjudication of Form I-765, Application for Employment Authorization, filed by H-4, L-2 and E nonimmigrants. Form I-765 cannot be approved until after the underlying H-4, L-2 or E nonimmigrant status is granted or extended upon approval of the Form I-539.⁶ The delays have also resulted in numerous stakeholder complaints and lawsuits against USCIS, many involving claims of severe financial hardship caused by expiration of prior employment authorization as applications remain pending. USCIS, therefore, urgently needs to address the unprecedented processing delays for H-4, L-2 and E nonimmigrants filing I-539 and I-765 applications and has decided to temporarily suspend biometrics submission for two years (May 17, 2021 through May 17, 2023) for applicants seeking an extension of stay in or change of status to H-4, L-2 or E nonimmigrant status so that USCIS can (a) mitigate the enormous burden on government of the litigation related to this issue and (2) address the processing delays resulting from limited ASC capacity due to COVID-19 health and safety protocols.

Therefore, USCIS must revise the Form I-539 to temporarily remove the biometrics submission and biometrics services fee requirements to address the negative impacts of the delays caused by the COVID-19 pandemic and based on the fact that we cannot reasonably comply with the normal clearance procedures under this part without public harm continuing to result. USCIS will still vet applicants using their name, address, and other information provided, and has the authority to require biometrics or an interview on a case-by-case basis in our discretion. Therefore, pursuant to 44 U.S.C. 3507(j)(1)(B) and 5 CFR 1320.13(a)(2), DHS is requesting that the Director approve the attached information collection request.

USCIS greatly appreciates the timely consideration of this request.

¹ Dependent(s) of an H-1B nonimmigrant.

² Dependent(s) of an L-1 nonimmigrant.

³ Dependent(s) of E-1, E-2, and E-3 principal nonimmigrants

⁴ See USCIS public website announcement of office closures available at <https://www.uscis.gov/news/alerts/uscis-temporarily-closing-offices-to-the-public-march-18-april-1>.

⁵ See USCIS public website announcement of certain office reopening available at <https://www.uscis.gov/news/alerts/uscis-preparing-to-resume-public-services-on-june-4>.
<https://www.uscis.gov/news/alerts/uscis-preparing-to-resume-public-services-on-june-4>.

⁶ See, e.g., [8 CFR 214.2\(h\)\(9\)\(iv\)](#)