

IMMIGRATION AUTHORITIES TO SUSPEND BIOMETRICS REQUIREMENT FOR WORK VISA DEPENDENTS IN EFFORT TO CLEAR UP BACKLOG

Insights
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The United States Citizenship and Immigration Services (USCIS) announced through a court filing on May 3 that it will suspend biometrics requirement for several categories of work visa dependent status application, thereby helping to speed up the adjudication of these applications and their associated employment authorization applications. The biometrics process involves a visit to the USCIS field office to provide fingerprints and photograph. The suspension of this requirement is expected to start on May 17, 2021 and last until May 17, 2023 and will cover extension and change of status for H-4, L-2, E-1, E-2, and E-3 categories. Both pending cases and new cases will be covered by this suspension. Impacted individuals and their employers may see a welcome relief in shortening the gap of employment authorization caused by the agency's delay.

How Did We Get Here?

For decades, the USCIS did not require biometrics for dependents of work visa holders when they change or extend status. Often, the dependents filed their extension of status and the associated employment authorization applications with the principal work visa holder's extension applications. The USCIS also adjudicated these cases together. With the optional premium processing service, many cases were adjudicated within 15 days of filing.

On March 6, 2019, the USCIS announced on its web page that it would revise the dependent application forms to add a biometrics procedure and biometrics fee. It gave the public about two weeks of notice and did not go through any

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regulatory rule-making process for this drastic procedural change.

The added biometrics requirement effectively separated the dependents' cases from their principal's cases, where the latter still enjoy fast processing time. In addition, principal work visa holders typically enjoy a 180-day automatic employment authorization extension as long as their extension applications are timely filed. While the dependent statuses do not have such benefit and must rely on an approved employment authorization to work.

The reason behind the biometrics requirement remains dubious especially considering that this requirement only applies to dependents of work visa holders, but not the work visa holders themselves. National security or background check reasons simply cannot explain away this disparity of treatment. Both work visa holders and their dependents were fingerprinted at the U.S. consulates and at the U.S. border. The government is fully capable of conducting background checks using those existing records in its database. The USCIS also has not published any data to suggest that work visa holder dependents pose more security threats to the country to justify this heightened requirement.

After COVID-19 struck, the USCIS temporarily shut down and reduced the field office capacity. This directly led to a drastic slowdown of biometrics completion. In the court filing, the USCIS stated that it currently has a backlog of about 123,000 dependent cases being handled by about 120 officers, averaging a backlog of about 1,000 cases per officer. Adjudication delays run between over six months to over one year. Many employers had to put impacted employees on leave or postpone onboarding due to the delay. The disruption on the employers and the individuals' personal lives is widespread.

During the past year, numerous lawsuits were filed against the USCIS for the unreasonable delay. Fisher Phillips also assisted over a dozen individuals to secure early adjudication of their cases to minimize their gap of employment authorization. In late March, a class action was filed against the USCIS, which led to this latest development.

Where Do We Go From Here?

This welcome development will start to shorten the processing time for the impacted individuals and bring some relief to their employers who are putting their jobs on hold. It remains to be seen how fast the USCIS can clear off the backlog. The USCIS stated that it will train about 30 more officers in May to help the process. It is unclear how long such training may take and how much of a dent they may put in the 1,000-case-per-officer caseload. Cases involving lengthy delays and compelling circumstances may still benefit from individual lawsuit to speed up the adjudication.

We will continue to monitor the development in this area and provide updates. Make sure you are signed up to receive [Fisher Phillips Insights](#) to receive the latest news direct to your inbox. If you have any questions, please consult with your Fisher Phillips attorney or any member of [our Immigration Practice Group](#).