

MARCH 25, 2019

H-4 DEPENDENTS FACE NEW HURDLES FOR MAINTAINING STATUS IN THE U.S.

On March 8, 2019, U.S. Citizenship and Immigration Services (“USCIS”) published a revised Form I-539, Application to Extend/Change Nonimmigrant Status, which is used to change or extend the status of a variety of nonimmigrants in the U.S., including H-4 dependents of H-1B workers. As of March 22, 2019, USCIS will only accept the revised version of the Form I-539 for requests to change or extend the status of H-4 dependents.

CHANGES TO FORM I-539

The revised Form I-539 includes significant changes that impose a higher burden on H-4 dependents legally in the U.S. These changes are as follows:

1. Each co-applicant included on the revised Form I-539 must now sign a separate supplemental Form I-539A to be included with the Form I-539.

While primary applicants were previously required to sign the Form I-539, co-applicants, who are often children, are now also required to sign the Form I-539A.

2. Most primary applicants and co-applicants, including H-4 dependents, must now pay an additional \$85 biometric services fee.

The new \$85 biometric services fee that must be paid on behalf of applicants and co-applicants is in addition to the current Form I-539 filing fee of \$370.

3. Each applicant and co-applicant, regardless of age, will now be issued a biometric services appointment notice from USCIS following submission of the revised Form I-539. The biometric services appointment will be scheduled at the Application Support Center closest to the primary applicant’s address.

While biometric services appointments are required for other types of applications, they were previously not required for most applicants and co-applicants filing the Form I-539, including H-4 dependents. However, USCIS has asserted its general authority to collect biometric information as part of any application at 8 CFR 103.2(b)(9) to support the requirement that applicants and co-applicants of the revised Form I-539 must now attend biometric services appointments.

PRACTICAL TAKEAWAYS

Before filing the revised Form I-539, nonimmigrants, including H-4 dependents of H-1B workers, should be aware of the additional signing requirement, biometric fee and biometric services appointment. Additionally, H-4 dependents should also be aware of the extended processing timeline caused by the biometric services appointment, particularly in instances where the corresponding H-1B petition requests premium processing. Although the Form I-539 is not eligible for premium processing, in the past, USCIS expedited H-4 petitions filed concurrently with H-1B petitions requesting premium processing. This was done as a courtesy to keep the adjudication of family petitions together. At this time, USCIS has not clarified how the implementation of the new biometric services appointment will affect the overall processing timeline of H-4 petitions filed concurrently with H-1B petitions requesting premium processing.

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