

Last Minute Changes Affect Family Members of Nonimmigrant Workers

February 15, 2019

USCIS to Publish Revised Form I-539 and New Form I-539A

This week the United States Citizenship and Immigration Service (USCIS) announced sweeping changes to the I-539 and I-539A forms and processes. Starting on March 11, 2019, USCIS will **only** accept a revised version of Form I-539, [Application to Extend/Change Nonimmigrant Status](#), with an edition date of 02/04/19. USCIS advises that they will reject any Form I-539 with an edition date of 12/23/16 or earlier. The I-539 form is used by certain nonimmigrants to extend or change to another status, such as dependents of H-1B and L-1 nonimmigrant workers. Complicating the required use of the new form is that it will only be published on March 11, the same day as its implementation.

USCIS will also be publishing a new Form I-539A, Supplemental Information for Application to Extend/Change Nonimmigrant Status, on the Form I-539 web page on March 11. Form I-539A replaces the Supplement A provided in previous versions of Form I-539. Every co-applicant included on the primary applicant's Form I-539 must submit and sign a separate Form I-539A. Parents or guardians may sign on behalf of children under 14 or any co-applicant who is not mentally competent to sign.

New Biometrics Requirement:

Every applicant and co-applicant will receive a biometric services appointment notice, regardless of age, containing an individual receipt number. The biometric services appointments will be scheduled at the Application Support Center (ASC) closest to the primary applicant's address. Co-applicants who wish to be scheduled at a different ASC location will need to file a separate Form I-539. There is an \$85 biometric service fee for every applicant and co-applicant.

Important Changes With Regard To Premium Processed Applications:

The I-539 is not a form that is eligible for premium processing. But, historically, if an I-539 was filed in conjunction with a petition filed on Form I-129 that was eligible for premium processing, as a courtesy, in conjunction with the principal petition, it would be adjudicated on an expedited basis. The new biometric requirement may very well preclude this practice as there is no practical likelihood that the application could be adjudicated in 15 days, given the need to manage the biometric scheduling process. This will significantly impact planning, particularly with reference to travel outside of the United States while the application is pending.

H-1B Cap Cases:

Since this change is also occurring immediately preceding the H-1B cap filing date of April 1, it will be critical to ensure all form versions are up-to-date and duly signed in a timely way as USCIS will reject any Form I-539 that is missing any of the required signatures or biometrics fees, including those required for Form I-539A. Proskauer will work with clients to ensure the filing deadlines are met.