



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

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Office of the Citizenship and Immigration Services Ombudsman  
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**RE: Biometrics for U and T Visa Applicants Abroad**

Dear Ms. Anderson, Dr. Strano, and Ms. McGovern:

We are writing to follow up on prior requests to remove the barriers to biometrics collection on U and T visa applicants abroad. These barriers prevent U and T visa applicants from completing their visa applications and, as a result, keep families separated and waiting in limbo with no end in sight. We understand that, due to COVID, there was a prolonged pause in biometrics collection at U.S. consulates, with limited emergency exceptions (e.g. age-out of derivative child abroad). Currently, many consulates are able to collect biometrics and complete visa adjudications. Unfortunately, many other consulates have still not resumed biometrics collections despite closures for three years, leaving the U and T visa applicants living in those countries unable to complete their visa applications through no fault of their own. Advocates report widespread issues in obtaining biometrics appointments abroad, including at the consulates in Amsterdam (Netherlands), Bridgetown (Barbados), Banjul (Gambia), Bogota (Columbia), Dakar (Senegal), Guayaquil/Quito (Ecuador), Manila (Philippines), New Delhi/Mumbai/Chennai (India), San Jose (Costa Rica), Santo Domingo (Dominican Republic),

Bogota (Colombia), and Tegucigalpa (Honduras). See the attached Summary of Examples for more information on practitioners' experiences in these and other consulates.

USCIS has not implemented a consistent policy permitting the submission of alternative evidence. Without an alternative policy, applicants are required to use consulates that are unable to collect biometric data and thus are unable to complete their visa requirements. Moreover, the inconsistency of USCIS adjudications exacerbates the harm caused by applicants' inability to complete their visa applications. We write to request your immediate implementation of policies that will allow for continued adjudication of U and T petitions for applicants abroad.

***I. Inconsistent Adjudications of U and T Visa Applications Based on Biometrics Unavailability Harm Applicants Abroad, their Families, and Counsel.***

USCIS inconsistently adjudicates visa applications where biometrics appointments are unavailable, causing difficulties for applicants and their counsel. As we noted in our previous letter, in some cases, USCIS has accepted alternative evidence of identity and criminal history in lieu of biometrics for U and T petitioners abroad. In many other cases, however, USCIS has issued successive requests for biometrics, delaying case adjudication for the foreseeable future. Moreover, despite the inability of U and T visa applicants to complete biometrics through no fault of their own, USCIS has *continued to deny* cases for alleged abandonment even after being notified by counsel of the lack of biometrics collection available at the relevant consulates. In a September 2022 USCIS stakeholder event, USCIS stated that these cases would not be denied if the representative timely responded to the RFE.<sup>1</sup> We ask USCIS to abide by this policy and cease denying cases where applicants are unable to complete biometrics.

In our last letter, we presented an example of an unjust denial: a U visa derivative applicant in El Salvador, for whom the consulate was unable to schedule a biometrics appointment. Despite the provision of alternative evidence and even communications from the U.S. Embassy confirming the unavailability of biometrics appointments, USCIS denied the visa application for abandonment. The applicant and her attorney were then forced to prepare a Motion to Reopen, which was ultimately unnecessary when USCIS realized its error and reopened the case sua sponte. USCIS then delayed the case further by taking over 6 months to respond to the applicant's multiple requests for reissuance of the biometrics notice to try again to schedule a biometrics appointment. The U-1 mother will likely be approved any day now and these applicants will remain separated from her longer than necessary.

A more recent example is a wife who was a derivative on her husband's U visa petition. Her derivative visa is still pending because she has been unable to schedule an appointment with the consulate for several years. The attorney tried to obtain a humanitarian appointment when the husband, who was living in the United States and waiting to reunite with his wife and daughter, was diagnosed with cancer. They were unable to obtain an appointment and the husband passed away. Furthermore, the wife is unprotected by INA § 204(l)(2)(E) because she was not in U derivative status when her husband passed away. Such denials are unwarranted and cause additional stress, trauma, continued family separation, and tragedy.

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<sup>1</sup> See AILA, *Unofficial Minutes from Call with USCIS on VAWA, Ts, and Us* (Sept 29, 2022), AILA Doc. No. 22112201.

These closures – for both biometrics appointments and consular appointments more generally – and ensuing delays also waste time and resources for USCIS employees, clients, and their representatives. USCIS must issue repeated RFEs and adjudicate appeals resulting from biometrics-related denials. Practitioners report receiving multiple duplicate RFEs for biometrics, sometimes issued only days apart, further draining resources for both USCIS and clients and confusing consular posts. Working to reopen erroneously denied applications also requires the expenditure of already depleted resources by many advocates at nonprofit organizations with limited staffing and budgets. Even for pending applications, multiple rounds of biometrics notices and requests for evidence expend scarce resources for the preparation of responses and keep families apart.

While USCIS regulations provide for the denial of an application for failure to appear for a biometrics appointment,<sup>2</sup> a denial should not be issued where a biometrics appointment was never actually scheduled or carried out by USCIS or DOS. Moreover, the inconsistency of adjudications makes it difficult, if not impossible, for advocates to adequately advise their clients or for their clients to plan for the future.

## ***II. USCIS Should Allow for the Submission of Alternative Evidence to Complete the Biometrics Requirement, where Consulates are Unable to Conduct Biometrics Collection.***

USCIS should adopt a consistent policy of accepting alternate evidence where biometrics are unavailable. In our letter dated November 3, 2021, we acknowledged the impact of the COVID-19 pandemic on consulates and noted that USCIS has allowed the temporary suspension of biometrics<sup>3</sup> for some status applications in addition to other COVID-related biometric flexibility.<sup>4</sup> While USCIS has continued to require biometrics for applicants abroad prior to adjudication of I-918, I-918A, and I-914A, it has not provided clear instructions or policy allowing U and T visa applicants to provide alternate evidence in lieu of biometrics. For example, USCIS has a policy to waive the fingerprinting requirement and accept alternative evidence where an applicant's biometrics are unreadable because of a medical condition, disability, birth defects, physical deformities, skin conditions, and psychiatric conditions.<sup>5</sup> Consulates that cannot collect biometric information in connection with U and T visa applications *create* an insurmountable requirement for which the USCIS should authorize this alternative means of satisfaction.

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<sup>2</sup> 8 CFR § 103.2(b)(13)(ii).

<sup>3</sup> Effective May 17, 2021, USCIS temporarily suspended the biometrics submission requirement for certain employment-based applicants filing Form I-539 for extension or change of status, <https://www.uscis.gov/news/alerts/uscis-temporarily-suspends-biometrics-requirement-for-certain-form-i-539-applicants>

<sup>4</sup> USCIS processed applications using previously submitted biometrics for applicants who had an appointment scheduled with an ASC on or after the March 18 closure or who filed an I-765 extension, [https://content.govdelivery.com/attachments/USDHSCISINVITE/2020/03/30/file\\_attachments/1414523/COVID-19%20Biometrics%20Reuse%2003-30-2020.pdf?ct=t\(AgencyUpdate\\_033120\)](https://content.govdelivery.com/attachments/USDHSCISINVITE/2020/03/30/file_attachments/1414523/COVID-19%20Biometrics%20Reuse%2003-30-2020.pdf?ct=t(AgencyUpdate_033120))

<sup>5</sup> USCIS Policy Manual, Volume 1, Chapter 2, Part C. <https://www.uscis.gov/policy-manual/volume-1-part-c-chapter-2#:~:text=C.%20Fingerprint%20Waivers>

**III. USCIS and DOS Should Ensure that the Biometrics Process is not a Barrier to U and T visa status.**

Given the continued inability of U and T visa applicants in at least twelve countries – Barbados, Colombia, Costa Rica, Dominican Republic, Ecuador, Gambia, Honduras, India, Mexico, Netherlands, Philippines, Senegal – to complete their biometrics processes, the ensuing extended family separation, and the continuation of the trauma underlying these petitions by their denial and inconsistent adjudications, we reiterate the following recommendations to USCIS to resolve these ongoing problems.

We respectfully request that USCIS:

1. Stop denying I-918A, I-918, and I-914As for applicants abroad based on failure to obtain biometrics appointments;
2. Reopen, sua sponte, those applications denied for failure to obtain biometrics abroad;
3. Permit U nonimmigrant and T derivative applicants abroad to submit alternative evidence in lieu of biometrics; *and*
4. Issue policy and guidance reflecting the above.

In addition to the above request, we urge USCIS to coordinate with Department of State (DOS) counterparts and request that DOS:

1. Reinstate the scheduling of biometrics appointments for U and T nonimmigrant applicants at consulates that have not yet resumed these processes;
2. Prioritize and accelerate appointments for those who have been stuck in the prolonged pause during Covid-19 shutdowns; *and*
3. Coordinate with USCIS on the issuance of biometrics appointments in accordance with USCIS regulations.

Should you require additional information, please do not hesitate to contact us. We would welcome the opportunity to meet or otherwise be of assistance.

Sincerely,

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