



ASISTA Policy Advocacy Update:

Overseas Biometrics for U & T Nonimmigrants

July 21, 2023

What's the Issue?

Early in the COVID pandemic, U.S. consulates stopped scheduling biometrics appointments and, as they started again, practitioners reported significant delays and difficulties in obtaining appointments for their clients abroad awaiting processing of their U or T visa petitions. These delays caused families to remain separated for longer periods of time, derivatives to lose eligibility, and improper denials for abandonment when an applicant could not schedule an appointment in time to respond to an RFE.

Hearing the impacts of these delays, and with no clear guidance from USCIS on how to address them, ASISTA collected case examples from practitioners to demonstrate the extent of the delays and the impacts on survivors and their families to USCIS.

The delays and difficulties in obtaining biometrics appointments abroad continue to this day. This update provides information on the ongoing advocacy efforts on this issue and what practitioners can do to address them.

The Update (So Far)

On November 3, 2021, ASISTA delivered a letter to USCIS to flag the issue of significant delays in biometrics collection for U and T visa applicants abroad, highlighting that many consulates had not fully resumed biometrics appointments. Further, USCIS had denied cases for alleged abandonment where the attorney had provided information on the unavailability of biometrics appointments at the U.S. consulate in the country.

In that letter, ASISTA requested that USCIS stop denying cases for U petitioners and U or T derivatives abroad who were not able to obtain biometrics appointments; *sua*

sponte reopen applications denied on that basis; permit alternative evidence in lieu of biometrics; and issue policy and guidance on these items. ASISTA also urged USCIS to coordinate with DOS to reinstate biometrics appointments for U and T visa applicants.

At a September 29, 2022 meeting with USCIS, the AILA VAWA, U, T National Committee, including ASISTA staff, followed up on the issue of significant delays in overseas biometrics processing and requested USCIS coordinate with DOS on the issue. USCIS responded that they were liaising with DOS to prioritize biometrics appointments for U and T nonimmigrant visa requestors. However, USCIS stated they are unable to create a program-wide policy to allow alternative evidence in lieu of biometrics due to national security and public safety concerns.¹

At that meeting, USCIS further stated that, for those abroad who cannot obtain a biometrics appointment due to lack of appointments, petitioners and derivatives should still respond to any RFE for biometrics by the RFE deadline and include evidence of their efforts to schedule an appointment. USCIS stated that these cases would not be denied for abandonment, but instead, would be placed on hold.²

At the end of 2022, hearing of ongoing issues related to obtaining biometrics appointments at consulates abroad, the AILA VAWA, U, T Committee collected additional case examples. Review of the many examples received indicated that, while some consulates had resumed collecting biometrics, many had not. Compounding the issue, some practitioners reported receiving denials for alleged abandonment in cases where evidence was provided that biometrics appointments were unavailable, contrary to USCIS' stated policy of not denying cases where a timely response to the RFE had been received.

On February 14, 2023, based on the case examples received, ASISTA, ILRC, ICWC, CAST, and AILA delivered a follow-up letter to USCIS to highlight the continuing issue of extensive delays for, or complete inability to obtain, biometrics appointments at many U.S. consulates for U and T visa applicants abroad.³ We, again, requested that USCIS not deny cases for applicants abroad who are unable to schedule biometrics appointments; reopen, *sua sponte*, any applications USCIS denied on that basis; permit alternative evidence in lieu of biometrics; and issue policy and guidance relating to these requests. Further, we urged USCIS to coordinate with DOS to reinstate biometrics

¹ AILA, *Unofficial Minutes from Call with USCIS on VAWA, Ts, and Us* (Sept. 29, 2022), AILA Doc. No. 22112201a, also available at:

<https://www.ilrc.org/sites/default/files/2023-02/Stakeholder%20Call%20with%20USCIS%20on%20VAWA%2C%20U%2C%20T.pdf>

² *Id.*

³ ASISTA, ILRC, ICWC, CAST, AILA, *Biometrics for U and T Visa Applicants Abroad* (Feb. 14, 2023), <https://asistahelp.org/organization-letter-to-uscis-re-biometrics-for-u-and-t-visa-applicants-abroad-feb-2023/>

appointments for U and T nonimmigrants at consulates that had not yet resumed them and to prioritize appointments for those who had not been able to get an appointment during COVID-19-related shutdowns.

In March 2023, in a Q&A with ASISTA, USCIS again noted that they have communicated to DOS the need to prioritize biometrics appointments for U and T nonimmigrant visa requestors.⁴ They also stated that they are continually liaising with DOS on a case-by-case basis. USCIS again reiterated that cases will not be abandoned for failure to provide biometrics, where a timely RFE response includes evidence of attempts made to schedule the appointment.

What to Do Now

ASISTA and partner organizations continue to monitor the situation and advocate for solutions to address the problem and its impacts.

The following information may be useful:

1. **Respond timely to RFEs for biometrics, with evidence of efforts made to schedule an appointment.**⁵ Where a consulate is not scheduling any biometrics appointments or has otherwise posted or shared information relating to delays in obtaining appointments, attach that to the RFE response, as well.
2. **Reach out to available channels if a case is improperly denied for abandonment.** Email or write to the service center that issued the denial to request review of the case and *sua sponte* reopening. You may also consider filing an I-290B Motion to Reconsider and/or Motion to Reopen to preserve that more formal avenue of advocacy.⁶

Additionally, a member of Congress can sometimes draw USCIS's attention to erroneous or unjust denials.⁷

⁴ ASISTA, *ASISTA Q&A with USCIS Humanitarian Division* (Mar. 17, 2023),

<https://asistahelp.org/wp-content/uploads/2023/03/ASISTA-Liaison-with-USCIS-March-2023.pdf>

⁵ As of March 23, 2023, the COVID-19 extensions for responses to RFEs, NOIDs, or NOIRs and for submitting I-290B motions and appeals ended. See USCIS, *USCIS Announces End of COVID-Related Flexibilities* (Mar. 23, 2023),

<https://www.uscis.gov/newsroom/alerts/uscis-announces-end-of-covid-related-flexibilities>

⁶ See ASISTA, *Practice Pointer: Filing Form I-290B When Multiple Interrelated Forms Are Denied* (July 2020),

<https://asistahelp.org/wp-content/uploads/2020/08/Practice-pointer-Filing-Form-I-290B-When-Multiple-Interrelated-Forms-Are-Denied.pdf>

⁷ ASISTA, *Practice Pointer: Requesting Congressional Liaison Assistance* (Sept. 2020),

<https://asistahelp.org/wp-content/uploads/2020/09/requesting-Congressional-liaison-assistance.pdf>

If you are an ASISTA member or receive OVW LAV/STOP funding, and you have made other efforts to get the case reopened, you may schedule an appointment with ASISTA, using our [Technical Assistance \(TA\) request portal](#), to determine whether an intervention is appropriate. ASISTA cannot guarantee action by the service center, but can draw attention to your client's case.

- 3. Carefully evaluate whether submitting alternative evidence in lieu of biometrics, without receiving advance permission from USCIS, is in your client's best interests.** The cost of alternative evidence may be prohibitive and, in certain regions, attempting to gather other forms of evidence may put someone in harm's way. As of now, there is no uniform policy by USCIS to accept alternative evidence where biometrics appointments are unavailable and USCIS has indicated that they will not be creating such a policy. Accordingly, where such evidence has been provided without a prior request from or authorization by USCIS, USCIS can still issue an RFE for biometrics. Thus, efforts made to gather and submit alternative evidence that USCIS has not requested may not stave off a future RFE requesting biometrics.
- 4. Participate in calls for examples on this issue.** As ASISTA and partner organizations plan to follow up on this issue, another call for examples will likely be issued. As we monitor the situation, knowing what you are experiencing in getting biometrics appointments in different consulates and the effects of delays or lack of appointments is vital in our advocacy to highlight how extensive and widespread the issue and impacts are. If you have participated or plan to do so in the future, thank you!

Stay in Touch with ASISTA!

As always, for case-specific questions or requests for assistance, ASISTA members, certain OVW LAV grantees/subgrantees and STOP subgrantees, and potential grantees can make an appointment for technical assistance at <https://asistahelp.org/technical-assistance/>.