

Explained: Why the US move to collect an array of biometric data from those seeking American citizenship is worrying immigrant hopefuls

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The Donald Trump administration's proposed regulation to expand biometric processing for immigrants seeking US citizenship, including children, will be open to the American public for comments starting today, September 11.

The US government is proposing to widen biometric collection beyond fingerprints, photographs and signatures to include DNA, iris scans and voice and palm prints, among other things. It also wants to collect these data from more people, including employers and family members sponsoring an immigrant.

Currently, children below 14 years of age are exempt from providing biometrics. The new rules will include them as well.

The public will have 30 days to comment on the proposed rules and 60 days to comment on the new US Citizenship and Immigration Services forms with the biometric requirements.

The rules will be reviewed based on the feedback. Revisions, if needed, will be made, and the final rules implemented.

What exactly do the biometric collection rules propose?

The proposed changes could have a significant impact on employment-based immigration.

1. The applicant for immigration, his/her sponsors (employers in the case of an employment-based visa) or US citizens will have to provide biometric data regardless of age, unless the Department of Homeland Security waives or exempts the request.
2. The rules also propose to widen the biometric modalities, to include an iris image, palm print, and voice print. Currently for H4 renewals, fingerprints are collected for verification to ensure that an applicant is not an illegal immigrant or someone with a criminal history.
3. The DHS has the authority to collect DNA to prove a genetic relationship. The agency may also store DNA results for other functions deemed necessary in administering and enforcing immigration and naturalisation (citizenship) laws.
4. Other rules include collection of biometric details of non-immigrants during the time of arrest, victims of violence and victims of human trafficking.

Under the proposed rules, all foreign nationals, including categories exempted earlier, will be subjected to biometric data collection till they are granted US citizenship. The move is ostensibly aimed at addressing inordinate delays in processing of visas stuck due to verification. In theory, having biometric data would speed up the process as record management would be easier.

Why now?

Immigration experts say the timing of the move is driven by the upcoming elections on November 3. President Donald Trump has been touting his immigration agenda and the move will just be the latest step by his government to tightly control immigration. Prior to this, on September 4, the DHS had submitted a proposal to revise H-1B regulations.

The latest move, to collect more biometric data from immigrant hopefuls, has raised huge concerns about privacy and the DHS' capacity to carry out the mission.

What are the concerns around privacy?

Collection and storage of data, including DNA, raises concerns about surveillance of both employees and employers and their privacy.

Fragomen, a US immigration law firm, said in a [blog](#) that given that privacy is at stake, robust public feedback could be expected and the rule might also be subject to legal challenges post implementation.

The wide-ranging collection of personal data may also deter American citizens or green-card holders from sponsoring family members or others as they may not be keen on going through the invasive process or having their biometrics residing in government hands.

Does the US government have the capacity to implement the rules if passed?

Implementation will be a huge challenge. In 2019, the Trump administration made biometric processing mandatory for H4 visa renewals and dependents of H-1B visa holders. However many of them have not been able to reschedule their biometric data collection since November 2019, well before the Covid pandemic. Effectively, many of them have been waiting to get their biometrics to get processed for close to 10 months now.

This could, in part, be attributed to application support centres, which take biometrics, being shut due to Covid-19. However, immigration experts have argued that there is inconsistency in biometric implementation and this could present a huge challenge as it is now being scaled up.

Will the changes increase the workload on the DHS? If so, what impact will this have?

As per DHS estimates, the new regulation will increase annual biometric screening from 3 million currently to 6 million records. Suresh Rajan, founder, LCR Capital, an immigration and investment firm, said that this will also have a negative impact on H-1B visa processing in the short to medium term. Delays may also attract lawsuits.

Currently many H-1B applications have been put under administration processing, which takes anywhere from a few weeks to a few months, before they are approved or rejected. This has nothing to do with biometric processing.

Rajan pointed out that the proposed rules do not address this issue or clarify if the biometric collection would help speed processing up.

Will the Trump administration try to speed up implementation?

It will be difficult since sufficient time needs to be given before the proposal becomes a rule. But the Trump administration is expected to spare no effort in speeding things up before the elections, which are less than two months away, said experts.

Democratic presidential candidate Joe Biden and Trump have vastly differing immigration agendas. If Biden were to be elected, the rule is likely to undergo substantial changes.