

I-94 Departure Record: Why it's Important When Travelling to the U.S.



Immigration Blog

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May 24, 2024 | **IMMIGRATION**

An I-94 is the record of a foreign national's arrival to, or departure from the United States. As such, it is a critically important document for all foreigners spending time in the United States.

In the old days, an I-94 was a small piece of cardstock that was slipped, paper clipped or stapled into the passport of a foreign national when entering the United States. It advised of the immigration status of the foreign national, where he entered the United States, on what date and until what date his status was valid. This was imperative information for the foreign national to have when entering the United States and throughout his visit to the United States. The I-94 contained a unique number and other important information, which was preserved for data entry into a government system. When a foreign national left the United States, this I-94 would be collected by the airlines if flying out of the United States or by foreign inspectors if driving. The I-94 would make its way into the U.S. government system to reflect that the foreign national had left the United States.

Nearly a decade ago, the U.S. Department of Homeland Security announced it would save \$1 million annually by

not issuing printed I-94s, introducing an electronic I-94 system. Foreign nationals could still request I-94s, but they were issued infrequently. Foreign nationals had largely never understood the I-94 anyway, but they did understand the stamps in their passport. Two years ago, U.S. Customs and Border Protection (CBP) added to the process of inkless entry by eliminating passport stamps.

Now, foreign nationals are supposed to know to look for their I-94 online — although this information is not routinely given to foreigners at their point of entry. Those using Trusted Traveler Programs are frequently unable to access their I-94s with ease. Canadian visitors — who have no visa — are often not issued electronic I-94s at all, resulting in accusations of illegal entry and difficulty in proving legal entry and maintenance of status in order to extend, change or adjust status from within the United States. Even when I-94s are issued, they often contain errors, such as designation as an entrant in an incorrect or inappropriate status (such as when a holder of a work authorization is admitted as a visitor). They also frequently show an incorrect period of admission; for example, a Canadian visitor who is admitted for a period less than the normal six months.

While these issues may sound small by themselves, having an incorrect I-94 is serious. If a work authorization holder is admitted as a visitor, they are not permitted to work — even if they are otherwise authorized by the Department of Homeland Security to work (when admitted in the correct status). If they don't work, this violates their visitor status. This may impact their ability to extend status, change to another nonimmigrant status, adjust status to Lawful Permanent Resident or re-enter the United States in the future. When cardstock I-94s were issued to foreign nationals, they could be checked on the spot. That is now not possible due to rules against the use of tech devices at ports of entry, and errors and delays in I-94s appearing on the U.S. CBP website.

It is also serious when an I-94 is issued for an incorrect period of admission. By the time this problem is identified, the individual may have accrued unlawful presence in the United States and potentially have triggered a penalty, such as a multi-year bar to admission. Due to so few foreign nationals being made aware of the need to check their I-94s, by the time they wish to take an action that is dependent on their I-94, it may be too late to fix the problem.

The U.S. CBP has mechanisms for fixing incorrect I-94s, including online, email and in-person solutions. These are not always effective. Sometimes, requests are ignored repeatedly. Other times, offices refuse to fix obvious errors. On occasion, great officers will solve problems and prevent future issues for clients. The agency spends many hours dealing with the problems caused by a flawed system that generates many careless errors in an area of law that requires foreign nationals to act with exactitude or pay a hefty enforcement price.

If you have questions or concerns about I-94 issues, you should speak with your immigration law professionals. At Lippes Mathias LLP, our team sorts through these problems regularly and is prepared to be of assistance. Please contact Eileen M. Martin (emartin@lippes.com) or Elizabeth M. Klarin (eklarin@lippes.com) for assistance.

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