



Important Immigration Documents

Passport and I-94

Passport Expiration Date vs. I-94

We have met some clients who were holding H1B visas but couldn't get 3-year admission stamps at the border and got upset and confused. In this chapter, we will explain how passport expiration date affects your admission until date on both your passport and I-94.

I What is I-94 Form?

The Department of Homeland Security (DHS) issues Form I-94, Arrival/Departure Record, to aliens who are:

- Admitted to the U.S.
- Adjusting status while in the U.S.; or
- Extending their stay

All persons need a Form I-94 except U.S. citizens, returning resident aliens, aliens with immigrant visas (Green Card), and most Canadian citizens visiting or in transit. Air and sea travelers will be issued I-94s during the admission process at the port of entry.

A Customs and Border Protection (CBP) officer attaches Form I-94 to the nonimmigrant visitor's passport upon entry to the U.S. (old version). Foreign nationals may check their I-94 online since a couple of years ago. The visitor must exit the U.S. on or before the departure date stamped on the Form I-94. This is the "Admit Until Date" on the electronic Form I-94. The Form I-94 number also is known as the Departure Number or Admission Record Number.

I At Least Six Months Passport Validity Required

As an initial matter, the Customs and Border Protection ("CBP") requires that passports be valid for six months beyond the date the traveler will exit the U.S., however, the U.S. has signed agreements with a number of countries to waive this requirement. When such an agreement is in place, the passport must be valid for the entire period of the visitor's intended stay, but the additional six-month validity period is not required.

I Passport Expiration Date Before Petition Expiration Date

The question then arises for travelers who are in the U.S. pursuant to a petition with a certain expiration date, such as H-1B, L-1, etc. For example, H-1B petitions are normally issued with a

validity of three (3) years and when an H-1B worker travels to the U.S., he or she would expect that upon entering the U.S., the CBP agent would provide a Form I-94 with expiration date equal to the H-1B expiration date plus ten (10) days. However, if the passport has an expiration date which is before the H-1B petition expiration date, CBP will normally issue a Form I-94 card with expiration date equal to the passport expiration.

*For example, your H1B petition is approved until 08/24/2021 (**This date is shown on your approval notice**), however, your passport is expiring on 06/24/2020. When you come back to the USA on 09/01/2019, the stamp will date your admission until 06/24/2020 which is consistent with your passport expiration date instead of your H1B petition.*

However, CBP is inconsistent in the application in this rule and they often disregard the earlier passport expiration date. This, unfortunately, creates confusion among many travelers who seem to get arbitrary Form I-94 expiration dates during different travels. Usually, when the CBP officer stamps your passport based on your passport expiration date, they would explain to you the reason. And this date will accordingly appear on your electronic I-94 <https://i94.cbp.dhs.gov/I94/#/home>

This is also why we strongly emphasize the importance of I-94 document. **We suggest visitors, students, immigrants check their I-94 online every time after they get admitted into USA, so you would be aware of the exact date you need to depart and you may arrange your next plan accordingly.** Also, sometimes, there might be some minor errors on I94; you can report to CBP in time to ask the correction.

I My I-94 Expiration Date is the Same as My Passport Expiration and Earlier than My Petition Expiration - What Should I do?

As discussed above, when the passport expiration date is before the petition (Form I-797) expiration date, CBP should issue Form I-94 with expiration date equal to the passport expiration instead of petition. As a result, the foreign national is allowed to remain in the U.S.

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for a period which is shorter than the period they (and their employer) expected. In such cases, it is important to understand the options for obtaining a Form I-94 with expiration date equal to the petition expiration.

Option 1 - Form I-94 “Correction” by CBP

Normally, CBP allows travelers who have been issued erroneous Form I-94 cards to visit a CBP office (normally at international airports) and, after obtaining a new passport, to request that they be issued a corrected I-94 card. This approach has worked for some of our clients in the past. However, some CBP offices refuse to issue such corrections because, technically, the initially issued Form I-94 didn't have a wrong expiration date. They issued the short period of stay because of the expiration date of passport.

Option 2 - Application for Extension of Status

Alternatively, an application to extend status may be filed with U.S. Citizenship and Immigration Service (“USCIS”) to request that a new Form I-94 card be issued to match the Form I-797 petition expiration date. This option must be pursued before the Form I-94 expiration date or the extension of status application may be denied.

Note that USCIS does not require that a passport has a validity for the entire period of requested extension of stay — all USCIS needs is a passport valid at the time of filing of the application to extend status. 8 C.F.R. § 214.1(a)(3). The passport does not have to be valid for the entire period of time requested in the extension of status application as the regulations only require that the individual agrees to maintain the validity of his or her passport.”

Therefore, filing for extension of stay has different regulations regarding the passport expiration date as the stamping at the border.

Cons of this solution is that you need to spend time and money on this application.

Option 3 - Leave the U.S. and Reenter with a Renewed Passport

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I Consequences of Overstaying Form I-94 Expiration

It is very important to understand that any corrections of Form I-94 card, extensions of status applications or travel abroad need to be attempted before the Form I-94 expiration date, as issued and determined by CBP. Overstay of the Form I-94 expiration date starts the period of unlawful presence which has severe consequences.

First, overstaying the end date of the authorized stay, as provided by the CBP officer at a port-of-entry and noted on the Form I-94 card would automatically void or cancel the visa stamp. In addition, filing for an extension of status after I-94 expiration has a significant chance of denial. Finally, overstaying the I-94 expiration by more than 180 days may trigger the 3-year ban of entering the U.S. (overstaying by more than one year may result in a 10-year ban).

I Conclusion

The Form I-94 expiration date is extremely important, and it should be checked upon each and every entry into the U.S. and, ideally, while at the CBP agent station. If you feel that you have not been issued a Form I-94 with a correct date, or birthday, or even your name spell, ask the CBP agent or ask to speak with a supervisor. Foreign nationals should not assume that because they are entering on a visa and pursuant to a I-797 petition approval which has a certain expiration date, that the authorized period of stay in the U.S. on Form I-94 would be the same.

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