



## How a foreign national's U.S. immigration expiration dates work

By Courtney H. New

Typically, a foreign national will be issued documents from three different U.S. government agencies—U.S. Citizenship and Immigration Services (USCIS), the U.S. Department of State and U.S. Customs and Border Protection (CBP)—in connection with his or her ability to enter the U.S. on a non-immigrant visa and his or her nonimmigrant status while in the U.S. To complicate matters further, F-1 students are issued a Form I-20 from Immigration and Customs Enforcement (travel issues specific to F-1 students who have a pending or approved H-1B petition will be addressed in a subsequent alert in this series). The differing expiration dates on these documents can be confusing but it is important to understand the significance of visa expirations versus status expirations. As explained below, foreign nationals must have an unexpired visa to enter the U.S., but it is fine if that visa subsequently expires. However, it is never acceptable for a foreign national to stay in the U.S. beyond the expiration of his or her period of lawful status (as governed by the I-94).

### I-797 Notice of Action

The first step in applying for a visa and obtaining nonimmigrant status in the U.S. is typically for the foreign national's employer to file a nonimmigrant petition with USCIS. Upon approval, USCIS issues an I-797 Notice of Action, which reflects the visa classification (H-1B, L-1A, etc.) the foreign national has been approved for and the validity period (i.e., an effective date and an expiration date). For example, an I-797 approval notice for H-1B status will typically reflect a three-year validity period.

### The visa: a foreign national's admission ticket

If the foreign national is outside the U.S. when USCIS approves the nonimmigrant visa petition filed by the employer and issues the I-797 approval notice, the foreign national must obtain a visa from the U.S. Department of State at a U.S. Consulate abroad before traveling to the U.S. (with the exception of Canadians who are not required to obtain visas for most nonimmigrant categories). After reviewing the foreign national's visa application, including the I-797 approval notice mentioned above, the U.S. Consulate will insert a visa, which is a stamp or sticker, on a blank page in the foreign national's passport. The visa essentially serves as the foreign national's "admission ticket" to enter the U.S.

The visa's effective date, or "issue date," will generally be the same as the effective date of the I-797 and the visa's expiration date is typically the same date as the expiration date on the I-797, but there are exceptions. The visa expiration date may be different from the I-797 in the following circumstances:

- Foreign national's passport expires prior to the I-797 expiration date, in which case the visa expiration may match the passport expiration, not the I-797; or
- The U.S. and the foreign national's country have a reciprocity agreement that provides for a different validity period. For example, based on the reciprocity agreement between France and the U.S., a French national will be issued an H-1B visa valid for five years, whereas the I-797 validity period is only three years. Conversely, based on the reciprocity agreement between China and the U.S., a Chinese national will be issued an H-1B visa valid for only one year, despite having an I-797 valid for three years.

With the possible exception of brief trips outside the U.S. to Canada or Mexico (discussed below), a valid, unexpired visa is always required to enter the U.S. Once in the U.S., however, as long as the foreign national's I-94 remains valid (see discussion below) for the duration of his or her stay in the U.S., an expired visa is not a problem.

Prior to any subsequent travel abroad, the foreign national should check the expiration date on his or her visa to confirm it will still be valid when he or she plans to return to the U.S. (with the exception of [certain travelers to Canada and Mexico](#) who may be eligible for automatic revalidation of their visas). If not, the foreign national will have to apply for a new visa at a U.S. Consulate abroad before returning.

## **PED expiration on the visa**

The Petition Expiration Date (PED) listed on a visa reflects the I-797 expiration date and the final date on which a foreign national can enter the U.S. using that visa without a new I-797 approval notice in-hand. While the PED is typically the same as the visa's expiration date, this is not always the case.

As previously discussed, there are instances when a foreign national may be issued a visa valid for more or less time than reflected on the I-797 and PED. To re-enter the U.S. after the PED, the foreign national will need to present his or her visa and a **new** I-797 approval notice reflecting an extension of his or her non-immigrant status beyond the PED listed on the visa.

For example, if an Indian foreign national is in possession of an I-797 approval notice with a validity period of July 1, 2017, to June 30, 2020, his or her visa will show an issue date of July 1, 2017, an expiration date of June 30, 2022 (five years) and a PED of June 30, 2020 (the I-797 expiration). In this case, the foreign national may continue to travel using this visa after June 30, 2020, but only if he or she has a new I-797 reflecting an extended petition validity period.

## **I-94 expiration: never let it expire!**

Once a foreign national has obtained the necessary visa, he or she can travel to the U.S. and seek admission at the port of entry. Upon entry into the U.S., CBP will create an I-94 record for the foreign national, which will reflect the date of entry, the nonimmigrant visa category and the period of authorized stay. CBP began issuing electronic I-94 records several years ago (replacing the

small white cards that were previously stapled into a passport). The electronic I-94 record should be downloaded from [CBP's website](#) after each entry into the U.S.

It is critical that foreign nationals monitor their I-94 expiration as regardless of the date on the I-797 approval notice or visa stamp, the I-94 expiration is the controlling expiration date and represents the period of time that the foreign national will be in legal nonimmigrant status in the U.S. In most cases, the I-94 expiration and the I-797 expiration will be the same.

If an I-94 is issued incorrectly by CBP, the foreign national must take the [necessary steps to correct his or her I-94](#) immediately. Incorrect I-94 records can have a very serious negative impact on status in the U.S. The most common errors tend to be I-94s issued with abbreviated authorized periods of stay and I-94s issued in B-1 business visitor status rather than the approved employment authorized status (H-1B, L-1, etc.). Even in cases where the I-94 expiration exceeds the I-797 expiration date, immigration counsel will need to ensure that the foreign national actually has proper work authorization for the full duration of his or her I-94.

If a foreign national is unaware of an I-94 error, he or she may inadvertently overstay his or her period of authorized status and lose employment authorization. Overstays and unauthorized employment can have serious negative consequences down the road. If traveling with dependent family members (e.g., spouse and children), each family member will want to review his or her I-94 to ensure admission was granted in the correct status and for the appropriate period of stay.

The members of the Nixon Peabody Immigration team are available to answer your questions. Please contact any of the following:

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