

How to Show Legal U.S. Immigration Status and Avoid Problems with ICE



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The news is full of stories about foreign nationals running into problems with the agencies that are tasked with immigration enforcement, issuing immigration benefits and border concerns. While there have been some changes to the priorities and the policies utilized by these agencies, the recommendations about how to maintain status, avoid apprehension and demonstrate legal status if apprehended have largely not changed.

Foreign nationals who are in the U.S. in legal nonimmigrant status should be aware of their immigration status. This requires accessing and reviewing the I-94 Arrival/Departure Record system online or on the U.S. Customs and Border Protection (USCBP) app to check status each and every time they enter the U.S. from abroad. This electronic record determines the length of permitted stay and confirms the status they hold while in the U.S. at any given time.

The reason for checking every time is that USCBP officers make mistakes, and the system is not foolproof. It is critical to check soon after entry and to have any errors corrected swiftly, as USCBP may not be willing to amend

an I-94 status document if some time has passed since entry or if the incorrect I-94 has already expired. This can result in accrual of unlawful presence, inadvertently working without authorization, and/or the need to leave and re-enter to get into the correct status. It can also result in the automatic revocation of an otherwise valid visa, causing a foreign national to have to apply for a new one. Due to the current policy of visas being issued from the home country of residence or citizenship, this could cause great inconvenience. Also, some visa applications from some countries have been paused at this time, creating the possibility of significant delays.

It is critical to understand that just because the error on an I-94 was USCBP's error, it does not necessarily alleviate the consequences of the error. USCBP often says that the onus for ensuring admission in the correct status and for the appropriate time period lies with the applicant for admission — not the officer admitting the nonimmigrant. If the applicant is not checking the I-94 and inadvertently accrues unlawful presence or overstays a visa, the consequences will not be negated simply because USCBP made an error or used their discretion to admit someone in a status other than the one they had requested or preferred. The responsibility for maintaining lawful and correct (e.g., work authorized) status lies with the nonimmigrant, and errors must be timely addressed before a problem occurs.

U.S. immigration law requires that every foreign national in the U.S. carry proof of registered status. A foreign national can carry a printout of the I-94 from the website, or the original I-797 approval notice with attached I-94 (where relevant). If these have not been updated or forwarded, carrying a photocopy or screenshot is better than not having any status document available at all.

One way to avoid interaction with U.S. Immigration and Customs Enforcement (ICE) is to avoid places where ICE may be present. Most notably, it is prudent to avoid any protests, activist events or other locations where it is likely ICE and/or the police could be called. Often, these types of events are promoted by social media or covered by local news outlets, which makes them visible not only to the public, but to U.S. government entities interested in finding and deporting persons who are in the U.S. without authorization. While a foreign national may have valid status, it is possible to get “picked up” for participation in criminal or even agitating activities by ICE or related government agencies, and it could take time to vet status before release. For this reason, even those with legal status should consider carefully the risks associated with participating in any activities that could be a platform for government actions to remove illegal aliens from the U.S.

Further, ICE and U.S. Border Patrol Officers can sometimes be found at hubs for public transport, including airports, train stations and bus stations. Foreign nationals — particularly those without proof of valid status — may want to consider avoiding these locations. If a foreign national plans to drive, it is recommended that he or she follow the rules of the road to avoid drawing attention to himself or herself, which could result in enforcement actions.

ICE officers are members of the community who enforce federal laws. Making their jobs easier by carrying the required documents in public will generally result in more positive interactions with these officers. Some enforcement actions, related protests and their media portrayal have created significant fear and anxiety even for those nonimmigrants and immigrants following U.S. laws; as such, avoiding the places ICE officers may frequent is likely to reduce anxiety.

To be sure that one's U.S. immigration status is in order or for more information about maintaining legal status in the U.S., the Lippes Mathias immigration team is happy to offer assistance. Contact partners Elizabeth M. Klarin (eklarin@lippes.com), or Eileen M. Martin (emartin@lippes.com) for questions or more information.

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