

## Problems Caused by U.S. Electronic Entry System



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October 27, 2023 | **IMMIGRATION**

In 2013, U.S. Customs and Border Protection (CBP) made its first moves toward a transition from paper admission documents to electronic issuance of I-94 Departure Records, which determine in what status and until what date a non-immigrant is admitted to the U.S. In 2022, CBP ended its practice of issuing paper I-94s entirely.

The electronic I-94 can be accessed through the website of CBP. It includes an admission date, a date of entry, class of admission and the date on which status in the U.S. expires. Unfortunately, many nonimmigrants have no idea that these documents exist, where to find them, or what the information means. Knowing where and when to access these documents is the first hurdle faced by many non-immigrants.

CBP asserts that an I-94 is generated every time someone enters the U.S. That assertion is incorrect. Travellers have been accused of being in the U.S. unlawfully based on the CBP system failing to issue this document following a certain entry. They have been denied immigration benefits to which they are entitled for the same reason. It is inexcusable for the U.S. government to require documents - or to make negative assumptions - based on its failure to issue a document. This causes confusion and expense for the public.

With some frequency, electronic I-94s are issued for the wrong classification. This can cause significant problems for someone with an approved work status or visa, who enters the U.S. to work, but is admitted as a visitor instead. By the time the non-immigrant determines an error has been made by accessing the electronic I-94, he or she may already have violated the mistaken visitor status in which admission occurred.

A more frequent problem stems from the date of status expiration. While the law states a visitor for pleasure (B-2) should be admitted for six months (unless a supervising officer decides on a shorter period of admission), the electronic I-94 system does not follow the law. Electronic I-94s are frequently issued for less than the authorized period of time. Non-immigrants who presume they were given the proper six months - and who fail to check their online I-94 record and notice the mistake in time - may end up accruing unlawful presence, resulting in visa invalidity.

Working non-immigrants have problems with electronic I-94 dates too. They may assume or be told information about the date of expiration of their status, which may change on their next trip back to the U.S. Or they may ask for a longer period of stay than the current I-94 and assume it has been correctly issued. They then find out when it is too late that they are out of status, have an invalid visa, and may be barred from re-entering the U.S. for years.

Not every non-immigrant can afford a device by which an I-94 can be monitored. Some nonimmigrants may choose a simple life without electronic monitoring by the government. A challenge is created when instead of the government issuing a document at a port of entry that can be seen and corrected on the spot, all parties rely on a system that may be inaccessible or just plain wrong.

CBP has created a web page on which one can request a correction of an errant I-94. These requests are sometimes ignored, and other times the requestor will be advised to contact another officer. Likewise, while some deferred inspection officers of CBP will correct I-94s issued incorrectly, others may ignore requests, or advise that they don't do that service. Some will even provide clients with poor legal advice for solving the problems created by the electronic I-94 system.

Because the electronic system is flawed, we recommend that our clients monitor it frequently, at least as often as they enter the U.S. If a traveler discovers an I-94 discrepancy, competent counsel may be able to assist and correct the errors caused in the I-94 system.

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