

## Correcting Errors on Form I-94<sup>1</sup>

Errors in the admission of foreign nationals to the United States are not uncommon, and while some errors are immaterial, others can have serious consequences such as an overstay of the authorized period of admission, resulting in visa cancellation per INA222(g), and potential application of the 3- and 10-year bars. Therefore, an immigration attorney whose representation extends beyond the preparation and filing of a visa petition or application, is in a position of having to at least advise upon, and possibly also track and follow up on, a foreign national's international travel.

Customs and Border Protection ("CBP") will correct admission errors made by its officers at U.S. ports of entry, but there are variances in process and policy. In 2021, CBP's Office of Field Operations confirmed in a liaison meeting with the AILA's CBP Committee, that Forms I-94s are non-jurisdictional and can be corrected at any office regardless of the arriving port or destination.<sup>2</sup> This principle was further confirmed by CBP OFO at the AILA Spring Conference on April 8, 2022. However, CBP also believes in port autonomy, such that there are significant differences in where CBP will allow for corrections (e.g., at the port of entry or at a deferred inspections office), how CBP will accept corrections (e.g., in person, by mail, by email, etc.) and whether CBP will accept certain corrections (some ports will only consider requests by those resident or employed in the area, or by those who were admitted at that port). Each CBP port director has the discretion to modify how Form I-94 corrections are made and there may be variances in accessibility due to capacity issues and other operational needs.

While CBP's Inspectors Field Manual is no longer in use, it summarizes the main categories of correction which relate to incorrect status or expiration, and errors in name.<sup>3</sup> CBP's current policy resource on this topic are: the Officers Reference Tool (ORT);<sup>4</sup> a guidance memo from 2013<sup>5</sup> reiterating that Deferred Inspections Sites (DIS) may issue corrections; and a guidance memo from 2015<sup>6</sup> stating that, while some deferred inspections offices have implemented alternatives to in-person appearances "to create a more efficient correction process," this "does not preclude requirements for in-person appointments."

As some CBP offices may be more responsive or flexible than others, those offices may receive a higher volume of requests which can cause those offices to become overwhelmed, resulting in the implementation of more restrictive policies. As deferred inspection policies and processes can change suddenly and without notice, AILA members would benefit from ensuring that Form I-94 correction requests are limited to only

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<sup>1</sup> Special thanks to CBP Committee member, Atessa Chehrizi, for her contributions to this practice pointer.

<sup>2</sup> [Notes from Fall 2021 AILA CBP OFO Liaison Committee Meeting](https://www.aila.org/advo-media/agency-liaison/aila-national-agency-liaison-meetings/notes-from-fall-2021-aila-cbp-ofo-liaison) <https://www.aila.org/advo-media/agency-liaison/aila-national-agency-liaison-meetings/notes-from-fall-2021-aila-cbp-ofo-liaison>, Question #17; AILA Doc. No. 22010502, Dated October 5, 2022.

<sup>3</sup> [CBP Provides Information on Correcting I-94s](https://www.aila.org/infonet/cbp-provides-information-on-correcting-i-94s) <https://www.aila.org/infonet/cbp-provides-information-on-correcting-i-94s> AILA Doc. No. 04052061, Dated May 20, 2004.

<sup>4</sup> [CBP Releases Officer's Reference Tool Documents](https://www.aila.org/infonet/gr-foia-cbp-table), <https://www.aila.org/infonet/gr-foia-cbp-table>, AILA Doc. No. 18112701, Dated October 21, 2019.

<sup>5</sup> [CBP Releases Memo on I-94 Automation and Deferred Inspection Sites](https://www.aila.org/infonet/cbp-memo-i94-automation-deferred-inspection-sites) <https://www.aila.org/infonet/cbp-memo-i94-automation-deferred-inspection-sites>, AILA Doc. No. 19081410, Dated May 31, 2013.

<sup>6</sup> [CBP Releases Memo on I-94 Automation and Deferred Inspection Sites](https://www.aila.org/infonet/cbp-releases-memo-on-deferred-inspection-sites) <https://www.aila.org/infonet/cbp-releases-memo-on-deferred-inspection-sites>, AILA Doc. No. 19012333, Dated February 27, 2015.

meritorious cases. The following section highlights several common issues relating to Form I-94 corrections.

### **Issues if the Form I-94 Correction will be In-Person**

A CBP office instituting (or re-instituting) an in-person appearance requirement for corrections may negatively impact some foreign nationals, for example, due to inconvenience or additional cost of the in-person appearance. Also, in a worst-case scenario, if the CBP office's conclusion is that a Form I-94, as issued, is correct and the foreign national is unlawfully present, there is an increased possibility of issuance of a Notice to Appear. However, if a correction is issued, and the passport admission stamp also had an error, it will generally be corrected as well.

### **Issues If the Form I-94 Correction Will Be Done via Email, Mail, Etc.**

Notably, while corrections via fax/phone/email/mail have the advantage of being convenient, there are potential downsides. Sending documents with personally identifiable information such as passports and I-94 cards via unprotected email raises security issues, and CBP offices may vary in terms of whether they will accept password protection of documents submitted with emailed requests. Another issue with corrections made in the absence of an in-person appearance is that only the electronic Form I-94 record is corrected. If the passport admission stamp also reflects an error, it cannot also be corrected.

### **Early Expirations that are not CBP Error**

If a passport expires on or within six months of<sup>7</sup> the requested end validity date, the foreign national's admission may be shortened. CBP does not consider this to be a CBP error and will generally refuse to "correct" a Form I-94 admission record that was shortened on this basis. Further, obtaining a new passport does not serve to extend the foreign national's status.

### **Attorney Representation<sup>8</sup>**

CBP reiterated its long-standing position that there is no right to an attorney at the port of entry, at primary or secondary inspection, or at deferred inspections in 2014.<sup>9</sup> However, at officer discretion an attorney may be present. Some offices may require a Form G-28, and some may require a DHS Form 590, to formalize the foreign national's consent to representation.

### **No Record/Incorrect Record**

Local deferred inspections offices may not be capable of correcting errors that involve certain incorrect records. For example, if the individual departed timely but there is an erroneous record that they did not depart, per CBP's StayCompliance<sup>10</sup> or the CBP One<sup>11</sup> mobile application, correction of an erroneous record of overstay may need to be communicated via the CBP Traveler Communications Center (TCC) at (202) 325-5120 or by email: [cbpinfocenter@cbp.dhs.gov](mailto:cbpinfocenter@cbp.dhs.gov), or by writing to the Department of Homeland

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<sup>7</sup> Whether the passport must extend six months beyond the requested end validity date depends on the nationality of the applicant. For more information, See: <https://www.cbp.gov/document/bulletins/six-month-club-update>

<sup>8</sup> [AIC Report on CBP Restrictions on Access to Counsel \(Updated 10/29/14\)](https://www.aila.org/infonet/aic-report-cbp-restrictions-on-access-to-counsel), <https://www.aila.org/infonet/aic-report-cbp-restrictions-on-access-to-counsel>, AILA Doc. No. 14101742, Dated October 16, 2014.

<sup>9</sup> [CBP Issues Memo on Legal Representation During Inspection](https://www.aila.org/infonet/cbp-memo-legal-representation-during-inspection) <https://www.aila.org/infonet/cbp-memo-legal-representation-during-inspection>, AILA Doc. No. 19072518, Dated August 19, 2014.

<sup>10</sup> [CBP Practice Alert: CBP Sending Compliance Emails to Warn VWP Entrants of I-94 Expiration Date](https://www.aila.org/infonet/cbp-practice-alert-cbp-sending-compliance-emails) <https://www.aila.org/infonet/cbp-practice-alert-cbp-sending-compliance-emails>, AILA Doc. No. 18011833, Dated January 18, 2018.

<sup>11</sup> <https://www.cbp.gov/about/mobile-apps-directory/cbpone>

Security's Travel Redress Inquiry Program (DHS TRIP) <https://www.dhs.gov/trip> or by mail, to 601 South 12th Street, TSA-901, Arlington, VA 22202.<sup>12</sup>

In addition, CBP recently indicated that the TCC may also have capacity to accept simple correction requests by email: [cbpinfocenter@cbp.dhs.gov](mailto:cbpinfocenter@cbp.dhs.gov).

### **Conclusion**

The process for correcting an improperly issued Form I-94 from CBP is fluid, variable and can change with little or no notice. In circumstances in which an error must be addressed, practitioners are advised to verify the available options and determine the most appropriate solution keeping in mind the client's needs.

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<sup>12</sup> <https://i94.cbp.dhs.gov/i94/#/faq>