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Going Paperless: CBP Announces Plan to Eliminate I-94 Arrival Record Card

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The Customs and Border Protection (CBP), which conducts inspections at the U.S. borders, announced its plan to immediately eliminate the I-94 card issued to nonimmigrant arrivals. The I-94 card is a white card affixed to the passport at the time of entry. This card is the document that grants nonimmigrant status and shows critical information such as entry date, authorized period of stay and class of admission. The elimination of this document was slated to begin late summer 2012 in a few small airports, but the CBP is accelerating this plan for system-wide implementation.

In lieu of the I-94 card, CBP plans to issue an admission stamp on the passport of a nonimmigrant which will include a handwritten notation of the admission status (whether H-1B, L-1A, etc.) and the authorized period of stay.

New Arrival Procedure

Nonimmigrants arriving at U.S. air and seaports using the Advance Passenger Information System (APIS) will no longer receive a physical I-94 card. The APIS is a web-based system used by commercial carriers and private aviation services to electronically update CBP with notices of arrival, departure and traveler manifests.

Going forward, nonimmigrants arriving at air and sea ports using APIS will only be issued a stamp in their passport and CBP will create an electronic record for arriving nonimmigrants.

Those arriving at a land border, with certain exceptions, will generally continue to receive a valid I-94 card. Certain classes of arrivals like refugees will also be issued valid I-94 cards.

During a transition period, CBP tentatively plans to issue a paper I-94 but with a control number that has no connection whatsoever to the arrival record of the nonimmigrant. This proposed paper I-94 would have no actual function and no legal significance.

Why Eliminate the I-94?

According to its August 7, 2012 update, the CBP is taking at least 30 days to enter foreign visitor travel information into its I-94 database and approximately $19 million per year to print, store, distribute, gather and enter I-94 data. Besides the cost savings of eliminating the I-94, CBP expects to reduce database errors through this electronic nonimmigrant admissions process which will utilize information provided in the nonimmigrant visa application submitted to U.S. consulates and APIS.

Impact on U.S. Employers and Nonimmigrants

The elimination of the I-94 card has far-reaching implications not just on nonimmigrants, but on U.S. employers as well. Regulations governing employment verification systems, specifically the Form I-9 and E-Verify, will need to be overhauled to reflect this change. Employers are currently authorized to accept a foreign passport and a properly endorsed I-94 or I-94A as proof of employment eligibility and identification to complete the Form I-9.

Many forms used by the U.S. Citizenship and Immigration Services (USCIS) to process immigration benefits like immigrant worker (I-140) or relative (I-130) petitions, adjustment of status to permanent resident applications (I-485) as well as applications for extension or change of nonimmigrant status (I-129, I-539) require the nonimmigrant's I-94 number.

CBP's plan could also potentially impact the USCIS procedure of issuing I-797 Approval Notices with a detachable replacement I-94 card to many nonimmigrants who change or extend their visa status. Although CBP has updated USCIS about its plan to eliminate the I-94, it is not clear how USCIS plans adapt to this development.

In addition, the elimination of the I-94 may affect the requirements for the issuance of Social Security Numbers to qualified nonimmigrants since the Social Security Administration relies on the I-94 as evidence of employment authorization.

State motor vehicle bureaus will also need to retrain personnel and reconfigure databases since they rely heavily on the I-94 for the nonimmigrant's status verification.

It is also unclear how the CBP will process the readmission of some nonimmigrants under its Automatic Visa Revalidation procedure without the I-94. Automatic Visa Revalidation allows nonimmigrants to return to the U.S. after a short visit from contiguous territory like Canada or Mexico upon presentation of their valid I-94 card.

Conclusion

Errors are inevitable during the admission process and even though CBP's goal for this change is to reduce errors. The entry stamp, nonimmigrant category and admission dates will continue to be entered by hand at the port of entry. As such, CBP Deferred Inspection Unit will continue to be available to correct admission errors.

Notably, CBP may create a web portal to allow nonimmigrants to verify the accuracy of the electronic record and the handwritten notation on the passport.

Although this transition will likely cause confusion for travelers to the US, CBP is following trends within the business community to reduce costs by reducing paper. Ultimately, travelers, employers, USCIS, States' Motor Vehicles Departments and the Social Security Administration will adapt.

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