



**ASISTA Practice Pointer:
Correctly Identifying the Expiration Date of U Nonimmigrant Status¹**
Updated February 8, 2024

Many practitioners report uncertainty about the date their client's U status expires because the client has multiple documents defining the validity of their status.² For instance, a U derivative may have: (1) the I-797 approval notice for the principal's I-918, (2) the I-797 approval notice for their own I-918A, (3) a U-3 (or other derivative U category) visa in their passport, (4) an I-94 from CBP, and (5) a passport entry stamp. Sometimes the expiration date on one of these documents is different from others. This resource provides strategies to address expiration date discrepancies, as well as to obtain the I-94, which is generally controlling.

Why does this matter?

It is critical for those with U nonimmigrant status to know when it expires so that they can either seek adjustment of status under INA § 245(m) before that date, or, if they have not yet accrued the three years of continuous presence in U status required to adjust status, they can timely apply to extend the U status to enable such accrual. U nonimmigrants also must know their status expiration date to know how long they will be work-authorized.³

Particularly for U nonimmigrants and derivatives who consular process, the dates on the USCIS I-797 Approval Notice may be different from the period of admission on the CBP I-94 card.⁴ Unless the U recipient can accurately identify when their status

¹ Copyright 2024, ASISTA Immigration Assistance. This update was authored by Rebecca Eissenova, Senior Staff Attorney. The resource is intended for authorized legal counsel and is not a substitute for independent legal advice provided by legal counsel familiar with a client's case.

² This practice pointer focuses on U visas, but many of the same difficulties and solutions also apply to T recipients. For legal provisions on T and T-based adjustment of status requirements, please refer to INA §§ 101(a)(15)(T), 214(o), & 245(l); 8 CFR §§ 214.11 & 245.23; [USCIS Pol'y Mem. 602-0032.2](#), and [3 USCIS PM.B](#). Perhaps of particular note, 8 CFR § 214.11(c)(3) specifies that USCIS must notify a T recipient of when their status expires once it is granted, and it is not clear this regulation is always implemented effectively.

³ For more on U recipients' work authorization incident to status, please see ASISTA's *Practice Advisory: Establishing Employment Authorization for T and U Nonimmigrants Without an EAD Card*, <https://asistahelp.org/wp-content/uploads/2022/08/Practice-Advisory-Establishing-Employment-Authorization-for-T-and-U-Nonimmigrants-Without-an-EAD-Card-Updated-in-August-2022-.pdf>.

⁴ Various reasons exist for this, including that CBP frequently grants an I-94 period of stay that is coterminous with a person's passport, if the passport expires earlier than the I-797 or visa expiration date.

ends, they may miss a deadline to apply for adjustment of status or an extension, or they may unnecessarily seek an extension. Both of these actions can waste time and resources or even entirely derail a case. They may also fail to properly understand the period in which they are authorized to work. To avoid such troubles, practitioners must be able to help U nonimmigrants accurately identify the date their status expires and plan an appropriate strategy and timeline for future applications.

Which document takes precedence?

In the past, practitioners relied on the expiration dates on the I-918/918A I-797 Approval Notice, even for U petitioners or derivatives who were not in the U.S. when the I-918/918A was approved. However, despite prior practice, since about 2019, USCIS has more regularly relied on the **CBP I-94 card to define the status**. Indeed, in an April 2023 unpublished decision, the AAO ruled that, “The period of authorized stay is determined at the time of admission, and ‘as with all other nonimmigrant classifications, the U nonimmigrant’s Form I-94 issued to evidence status will indicate the approved period of stay.’”⁵ Thereafter, in September 2023, USCIS shared during an ASISTA engagement that the I-94 is the controlling, status-defining document in all contexts.⁶ USCIS also stated that, where a U recipient cannot access their I-94, the passport

See INA § 212(a)(7)(A)(1)(I) (requiring nonimmigrants to have a valid passport). Another common reason is that regulation forbids DHS from issuing to a derivative an initial period of status that exceeds the expiration date of the initial period approved for the principal. 8 CFR § 214.14(g)(1). From member reports to ASISTA, this regulation appears to be implemented only sporadically, with both USCIS I-797s and CBP-issued I-94s sometimes being issued in its contravention. In addition, CBP often grants derivatives a full four years in status from the date they enter the US, regardless of the expiration dates on their own or their principal’s I-797 or visa. In recognition of the confusion and doubt this all sows, ASISTA and partners have been advocating through various channels for USCIS and CBP to create clear, uniform, public guidance on how they determine when U or T status will expire. We will update the field if this becomes reality.

⁵ *Matter of 26666007*, (AAO, Apr. 27, 2023) (unpublished), available at [https://www.uscis.gov/sites/default/files/err/A6%20-%20Adjustment%20of%20Alien%20in%20U%20Nonimmigrant%20Status%20I-485%20U%20Sec.%20245\(m\)\(1\)%20of%20the%20INA/Decisions_Issued_in_2023/APR272023_01A6245.pdf](https://www.uscis.gov/sites/default/files/err/A6%20-%20Adjustment%20of%20Alien%20in%20U%20Nonimmigrant%20Status%20I-485%20U%20Sec.%20245(m)(1)%20of%20the%20INA/Decisions_Issued_in_2023/APR272023_01A6245.pdf) (denying U-based adjustment of status because the applicant’s I-94 had expired by the time of filing the I-485, even though the I-797 period had still been valid) (ruling, too, that the I-797 approval notice of the I-918A sets forth the period in which the person must travel to take up status, while the I-94 defines the actual authorized stay in status, and citing Interim Rule, New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,028 (Sept. 17, 2007), as well as Dept. of State website information including *What the Visa Expiration Date Means*, U.S. Department of State Bureau of Consular Affairs, now available at <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/visa-expiration-date.html#:~:text=The%20visa%20expiration%20date%20is.entry%20in%20the%20United%20States> (last visited Feb. 1, 2024).

⁶ Official notes from the engagement are forthcoming and this advisory will be updated with a link to them. As the policy change toward relying on the I-94 period of stay instead of the I-797 period of stay was taking effect, members reported that I-765s continued being adjudicated based on the I-797 period of stay despite the shift in other contexts. Reports of this have decreased but still occur. If this happens to your client, ASISTA recommends pointing to the authorities cited in this resource to assert the I-94 period should control, and, if you are an ASISTA member or recipient of STOP or LAV funding from the Office on Violence Against Women, requesting technical assistance with ASISTA for strategy guidance.

stamp may also be relied upon, because that date should be the same as the one on the I-94.⁷

How does this affect case strategy?

Check now whether there is a discrepancy between your approved U client's CBP-issued I-94 expiration date and their USCIS I-797 Approval Notice date.⁸ **If the I-94 date still has not passed and your client will be able to accrue the 3 years necessary to file for adjustment of status, there is no need to take further action,** even if the I-797 Approval Notice date is different, and even if it has expired.⁹ If the I-94 provided fewer than the three-or-more years required to adjust, follow the steps below as applicable.

1. CBP-Issued I-94 Provided Fewer Than 3 Years and Has Not Expired

- Before the period of stay on the I-94 expires, submit a Form I-539, Application to Extend Nonimmigrant Status.¹⁰
- In the I-539 filing, request the remainder of the 4 years of U status, counting from the date of admission into the US.

⁷ Official notes from this engagement are forthcoming and this advisory will be updated with a link to them. See also US CBP, *I-94 Quick Reference Guide for Local, State and Federal Agencies*, available at https://studyinthestates.dhs.gov/sites/default/files/I-94_Quick_Reference_Guide_Flyer_0812_FINAL.PDF (depicting various versions of Form I-94, and including among them a sample passport with admission stamp).

⁸ Please see FN 4, *supra*, for an explanation of common reasons this can happen.

⁹ Until USCIS publishes a policy officially confirming in writing that the I-94 date controls duration of status, best practice may be to explain to clients that the basis for believing the I-94 date controls is an unwritten policy and pattern of practice. In theory, it could change again, as it did around 2019, affecting your client's eligibility. ASISTA views this as unlikely, given the long-standing Dept. of State position that the I-94 controls, and the fact that the I-94 controls the duration of status for other nonimmigrant statuses. See, e.g., FN 5, *supra*. However it is not impossible. Risk-averse clients with the resources to file an I-539 may choose to file one in advance of the I-797 expiration date, to hedge against this possibility. They should be advised that this is not likely to harm their case, but ASISTA has heard of I-539s being rejected or denied in this posture, because USCIS finds the person to still be in lawful status based on the I-94 dates. In other words, hedging in this way could risk a small waste of resources.

¹⁰ Although USCIS PM 602-0032.2 calls for U extension requests to be filed within the last 90 days of valid status, USCIS has stated that it will also accept and even encourage such filings earlier than that. Stakeholder Meeting: Q&As from the American Immigration Lawyers Association (AILA) and Coalition partners meeting (May 8, 2023), available at https://www.uscis.gov/sites/default/files/document/outreach-engagements/AILA_Meeting_with_USCIS_on_U_Visa_T_Visa_and_VAWA_petitions-May_2023.pdf. Accord Instructions for Application to Extend/Change Nonimmigrant Status, Form I-539, 1 (Ed. May 31, 2022) (“[W]e suggest you file . . . as soon as you determine your need to change or extend status”); 8 CFR § 103.2(a)(1) (incorporating form instructions into the regulations). Given the prolonged processing times for I-539s as of the date of this resource, ASISTA recommends filing the I-539 as soon as you know your client does not have an authorized period of stay that is long enough to complete 3 years of U status. Unfortunately, a U recipient will not be eligible for an employment authorization document until the I-539 is approved, so filing as early as possible also helps protect employment eligibility. *But see* FN 14 *infra*.

2. CBP-Issued I-94 Provided Fewer Than 3 years and Has Expired

- File a Form I-539 extension application as soon as possible, and request *nunc pro tunc* (late-filed) extension pursuant to 8 CFR § 214.1(c)(4) and USCIS policy.¹¹ USCIS can grant a *nunc pro tunc* I-539 in its discretion where the delay in filing was “due to extraordinary circumstances beyond the control of the applicant or petitioner, and the Service finds the delay commensurate with the circumstances.”¹² This standard, which is similar to an equitable tolling standard, is assessed in addition to the regular requirements of a request to extend U status, which demand a showing of either law enforcement need or exceptional circumstances.¹³
- Indicate prominently in your cover letter, such as through bold typeface and highlighting, that the I-539 extension is being sought *nunc pro tunc* and provide a client affidavit and other evidence supporting both standards above, along with positive discretion.
- Argue that USCIS should extend U status back to the I-94 expiration date and up to the four years allowed for U visa status. The goal of these steps is to ensure the applicant will have no breaks in status and be able to accrue the requisite period of continuous physical presence to be able to file an I-485.
- You may file an I-485 while an I-539 *nunc pro tunc* extension application is pending, if the client would be eligible to adjust once the I-539 was granted.¹⁴

What if your client does not have a copy of the I-94?

ASISTA frequently hears of U principals and derivatives who enter from abroad and are not provided an I-94 arrival document at entry. Without seeing this critical document, it can be hard to know when their status expires.

¹¹ USCIS PM 602-0032.2; 8 CFR § 214.1(c)(4). Note that 8 CFR 214.1(c)(4) applies to *nunc pro tunc* requests for all nonimmigrant visa categories and contains other provisions not applicable to U visa holders (e.g., that the applicant has not otherwise violated his or her nonimmigrant status). Arguably, it unlawfully restricts U recipients in removal proceedings or subject to unexecuted orders of removal from pursuing *nunc pro tunc* extensions. If you need to make an argument for an extension in those circumstances, please schedule a technical assistance call with ASISTA.

¹² 8 CFR § 214.1(c)(4). Consider making due process arguments, including those based on ineffective assistance of counsel, if necessary. You may also schedule a technical assistance appointment with ASISTA to discuss arguments.

¹³ INA § 214(p)(6). For more on exceptional circumstances, see USCIS PM 602-0032.2.

¹⁴ See, e.g., *Matter of R-R-I*, ID # 1024912 (AAO Apr. 25, 2018) (non-precedent). File the forms in the locations indicated on the USCIS website, potentially including the I-539 receipt with your I-485 submission, if the two must be sent to different locations. Note in your I-485 cover letter that an I-539 *nunc-pro-tunc* extension is pending and request the I-485 be held in abeyance and decided after the I-539. This technique can enable a client to obtain work authorization under the (c)(9) (pending adjustment application) category sooner than if they delayed filing the I-485 until the I-539 was approved and planned to work based on an (a)(19) or (a)(20) category for an extended U. However, bear in mind that USCIS takes the position that the client must be eligible for adjustment at the time of the I-485 filing, or the application can be denied. See, e.g., 8 CFR 103.2(b)(1). This means that before they file the I-485 they must have accrued three years of continuous physical presence since their first date in U status. In addition, note that if the *nunc pro tunc* I-539 is ultimately denied, the I-485 will be as well. This possibility means a concurrent I-485 filing could potentially be a waste of resources and money some clients may prefer not to risk, even for a quicker EAD.

CBP has stated it is creating a policy to issue paper I-94s to all U visa holders in the future, and to correct the problem for those who entered and were not given the I-94 in the past.¹⁵ Unfortunately, this policy is not expected to be public-facing and it is not known whether stakeholders will even be informed when it is adopted. In the meantime, remember that **USCIS generally encourages reliance on the passport stamp date as being equivalent to the I-94 date**,¹⁶ and consider the following steps if your client is missing the I-94:

- Attempt to use [CBP's website](#) to obtain a copy. Although confidentiality protections under 8 USC § 1367 generally prevent I-94s from appearing on the site for U recipients, this does not appear true in 100% of cases.
- Contact the [CBP Deferred Inspection site](#) nearest the client, or with jurisdiction over the port of entry where the client first arrived with U status, and attempt to obtain a copy of the I-94 there. If the nearest Deferred Inspection site is a great distance away from the client, or to save the client time, consider first requesting that CBP issue a new I-94 by email.¹⁷
- Submit a [question](#) to the [CBP Traveler Communications Center online](#), selecting the Topic as "I-94/Traveler Compliance," the Applicable Issue as "Issue with my I-94/Travel History," and adding a brief description of the applicant's name, entry date and manner and the fact that they are missing an I-94. You can also call the Center at 202-325-8000.
- Submit a [FOIA request to CBP](#). Some practitioners report receiving a copy of the I-94 in the production. If one does not appear, you can also consider appealing the FOIA.
- Consider filing [Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document](#). Although it is hoped one of the above strategies will work, this is often an effective, if slow and expensive, last resort if your client needs the I-94 for a particular reason and cannot obtain it any other way.

¹⁵ See, e.g. AILA et al., *Stakeholder Call with USCIS on VAWA, U, T* (Sep. 29, 2022), available at <https://www.ilrc.org/sites/default/files/2023-02/Stakeholder%20Call%20with%20USCIS%20on%20VAWA%2C%20U%2C%20T.pdf>.

¹⁶ USCIS most recently confirmed this in a call with ASISTA in September 2023, for which the official notes will be forthcoming shortly and a link added here at that time. See also US CBP, *I-94 Quick Reference Guide for Local, State and Federal Agencies*, available at https://studyinthestates.dhs.gov/sites/default/files/I-94_Quick_Reference_Guide_Flyer_0812_FINAL.PDF (depicting various versions of Form I-94, and including among them a sample passport with admission stamp).

¹⁷ Find Deferred Inspection sites on [CBP's website](#). From ASISTA member experiences, it appears the sites vary widely in how and when they provide new I-94s. Some have been willing to email a copy if you contact their I-94 correction inboxes and are on the G-28, others require the U or T recipient to come in person but will provide the I-94 regardless of where they originally entered, some will assist only if the U or T originally entered within their jurisdiction and comes in person, and still others are reluctant to assist at all. You may wish to consult local colleagues about their experiences before sending your client to the site, and even consider attending with the client. If an officer is initially reluctant, consider requesting assistance of a supervisor, who may be more aware of this U/T-specific issue and purported or upcoming policy change.

Please Keep In Touch With ASISTA!

Please keep ASISTA informed on issues related to U status validity dates, missing I-94s in U cases, and how the strategies in this advisory are working.¹⁸ ASISTA and its partners regularly use this information to demonstrate problems and propose solutions to DHS policy makers. Additionally, we continue to collect examples of USCIS adjudicators deeming as controlling a U validity period other than the one on the I-94, whether for U-adjustment of status, I-539 extension applications, or I-765 work permit validity date purposes. If you have evidence of this in your case, please contact us via the member's Technical Assistance portal on our website.

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¹⁸ As with any call for examples, the more specific information you can provide, the more impact your example can have, but anonymous contributions are also helpful. Among other things, ASISTA used examples on this subject in 2023 to communicate through formal advocacy letters and informal engagements with USCIS and DHS's Office for Civil Rights and Civil Liberties about concerns with missing I-94s and status expiration-related issues, and we plan to continue tracking and making recommendations on the matters.