

## Passport Control Muster

- Week of Muster:** April 11 thru 17, 2010
- Topic:** Correction of Erroneous Records of Admission (I-94 Corrections)
- Reference Materials:** 8 CFR 101.2; 8 CFR 214.1(a)(3); 8 CFR 214.2 and the Inspector's Field Manual (IFM), Chapters 15.4, 15.12(a) & 15.12.(c)

The purpose of this muster is to explain the requirements for correcting I-94 errors and to eliminate any confusion regarding when an alien is entitled to a correction. Erroneous I-94 records are corrected to grant an alien the correct class and period of admission to which s/he was entitled on the date of original admission, subject to the passport validity requirements that applied to the alien at the time of admission.

An alien is entitled to an I-94 correction whenever it has been determined that s/he was admitted in an incorrect class of admission and/or admitted for an incorrect period of time, subject to only three conditions:

1. There was an error when the alien was originally admitted;

- 2.

- 3.

(b) (7)(E)

There is nothing requiring the original error to have been on the part of the inspecting officer or any other agent of the US government. There is also nothing to prevent such a correction when the original error was clearly on the part of the alien, as long there is no evidence of deliberate fraud or deception. There is also no time limit for correcting erroneous I-94 records even if the original period of admission has expired as long as the original period was granted in error. Consider the following two examples:

Example One: On 12/26/08, an alien applied for admission as a nonimmigrant alien in a specialty occupation (H-1B). She presented a valid H-1B visa showing a petition expiration date of 01/09/10. She also presented a passport valid until 12/23/10. She was also the beneficiary of an approved H-1B petition with a petition expiration date of 09/07/10. This petition was in effect on the date that this alien applied for admission but she failed to present it to the officer. The officer, not knowing about the new petition, admitted this alien for the validity of the original petition plus 10 days, until 01/09/10. Two months later this alien finally noticed that her period of admission had expired and requested a corrected I-94 showing a period of admission for the validity of the new petition, plus 10 days, until 09/17/10.

This was an erroneous admission. The alien was entitled to have been admitted as an H-1B until the expiration date of the new petition, plus 10 days. The fact that the error was due to the alien and not to the officer is irrelevant. This correction request cannot be denied unless the original error was (b) (7)(E)

(b) (7)(E)

This alien is entitled to be issued a replacement Form I-94 showing the correct period of admission. Telling the alien to use the I-94 contained in the corner of the Form I-797 is unacceptable. The alien must be issued a new Form I-94 to replace the erroneous form and the record updated (b) (7)(E)

Example Two: On 02/27/10, an alien applied for admission as a nonimmigrant alien of extraordinary ability (O-1) accompanied by his dependant spouse (O-3). Both were visa exempt as citizens of Canada and presented valid Canadian passports. The O-1 principal alien presented a Form I-797 showing that he was the beneficiary of an approved, valid O-1 petition. The primary officer admitted the principal alien as an O-1 but admitted the alien's accompanying dependant spouse as a B-2 because the dependant's name was not on the Form I-797 or on any petition. The requirements for the admission of an alien as an O-3 are found in 8 CFR 214.2(o) and in IFM 15.4(o)(3). These references contain no requirement that the O-3 alien be listed on any petition or Form I-797. There is such a requirement for a change of status from another nonimmigrant class to O-3 but it is not a requirement for admission as an O-3.

This dependant alien met all of the requirements for admission as an O-3 and the primary officer identified no evidence of inadmissibility. Therefore, she was clearly entitled to be admitted as an O-3 for the validity of the principal alien's O-1 petition (plus ten days), subject to passport validity.

This I-94 record must be corrected unless the original error was (b) (7)(E)  
(b) (7)(E)

(b) (7)(E) Otherwise, this alien is entitled to be issued a new Form I-94 showing the correct class and period of admission. This must also be updated (b) (7)(E)

An erroneous I-94 record will not be corrected to grant a period of admission beyond the passport validity requirements that applied to the alien on the date of original admission. This holds true even if the alien presents a new passport when requesting a correction. This alien will be issued a corrected Form I-94 consistent with the applicable passport validity requirements but must then apply for an extension of stay.

Finally, officers must always remember that the I-94 correction process is a powerful tool.

(b) (7)(E)

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