

CLIENT ALERT

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USCIS DESIGNATES I-94S WITH NEW ADMISSION CODES FOR E AND L SPOUSES AS LIST C DOCUMENTS... WHAT?

by Kathleen Campbell Walker¹

After the United States (U.S.) Citizenship and Immigration Services (USCIS) recognized that E and L nonimmigrant spouses are entitled to work in the U.S. "incident to status" on November 12, 2021, a new Category of Admission (COA) codes were created for use in issuing Forms I-94. And on [March 18, 2022, USCIS updated its Policy Manual](#) to advise how certain E and L dependent spouses (age 21 and over) may document their work authorization for Form I-9 purposes in a new way. Please refer to our [prior blog](#) regarding E and L spouse I-94s on this subject.

Who is affected by this Policy Change?

First, USCIS and CBP started issuing Forms I-94 with the new COA codes for E and L spouses as of January 30, 2022 (e.g., E-1S, E-2S, E-3S, and L-2S). An unexpired I-94 with one of these new codes may be accepted for **List C** under Form I-9. This means that when completing a [Form I-9](#) for a new hire, employers will still need to request a List B identity document when presented with one of the new Form I-94 with these codes.

Second, for those E or L spouses age 21 or over with an **unexpired** Form I-94 that **USCIS issued** before January 30, 2022, USCIS will mail a notice starting on or about April 1, 2022 to these individuals. The notice, along with an unexpired Form I-94 reflecting E-1, E-2, E-3, E-3D, E-3R, or L-2 nonimmigrant status, may be used for documentation of employment authorization for Form I-9 purposes. *Thus, when an I-94 does not have the new COA, the employer has to look at yet another form to complete List C.*

When does USCIS issue a Form I-94?

USCIS may issue a Form I-94 at the bottom of Form I-797 approval notice based on a status change or extension application. For E and L spouses, the USCIS form used to apply for an extension is Form I-539.

What if I do not receive the notice from USCIS?

IF you are an E or L nonimmigrant spouse with a **USCIS issued** Form I-94 and have not received the USCIS notice by **April 30, 2022, please use E-L-married-U21@uscis.dhs.gov** to request a notice.

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What does this Policy Change not address?

This is a Policy Change announced by USCIS, not U.S. Customs and Border Protection (CBP). USCIS issues Form I-94 upon arrival in the U.S. via land, sea, or air. Typically, those applying for admission to the U.S. will retrieve their electronic I-94 record from the CBP website at: <https://i94.cbp.dhs.gov/i94/#/home>. CBP started issuing Forms I-94 with the new codes for E and L nonimmigrant spouses on January 28, 2022.

What are the new approved Category of Admission (COA) codes being used by CBP?

E-1S – Spouse of E-1

E-1Y – Child of E-1

E-2S – Spouse of E-2

E-2Y – Child of E-2

E-3S – Spouse of E-3

E-3Y – Child of E-3

L-2S – Spouse of L-1A or B

L-2Y – Child of L-1A or B

Please note that USCIS is also using these codes when approving a change or extension concerning L or E dependent status, which is stated on the I-94 placed at the bottom of the [I-797](#) approval notice. These codes are only applied to new arrivals to the U.S. by CBP.

Will CBP "correct" an I-94 issued to an E or L dependent spouse to include the new COA?

If E and L spouses and children last entered the U.S. **after** January 28, 2022, which is the date that CBP began the use of the new COAs for E and L nonimmigrant dependents, CBP will correct the I-94 via the CBP [deferred inspection](#) location closest to the physical location of the nonimmigrant requiring the correction. In some cases, these corrections may be made via email.

Any qualified E and L nonimmigrant spouses and children, who entered the U.S. **prior** to January 28th, 2022, must contact USCIS for assistance with having their COA modified. **Note that if they depart the U.S. and are eligible to apply for readmission at a port of entry, CBP may issue a new I-94 with the appropriate code. It is essential to consult with legal counsel before departing the U.S. to consider admissibility requirements to be eligible to return to the U.S. Automatic Visa Revalidation (AVR) does not apply to those with a pending change of status (not yet approved).**

So what does this mean for an E or L nonimmigrant spouse requiring a document for work authorization proof for Form I-9 purposes ASAP?

First, for those E and L nonimmigrant spouses over 21 in the U.S. with a USCIS issued Form I-94 (e.g., normally those who were approved for extensions or changes of status by USCIS) without the new COA code, they will be looking for USCIS notices VIA MAIL to be used in conjunction with their existing USCIS I-797 approval notices to prove work authorization for Form I-9 purposes. They should mark April 30 on their calendar for the email follow-up described above to request the notice, if they have yet to receive it by this date.

If an E or L nonimmigrant has an unexpired Form I-94 issued by CBP at a port of entry without the COA code, they can consider:

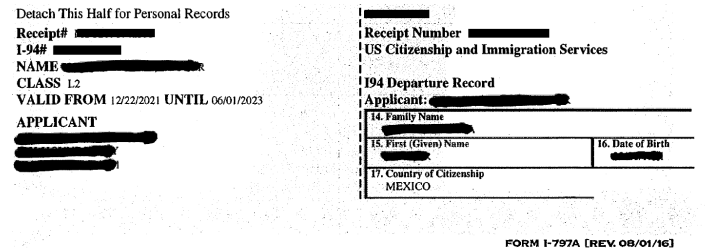
- If they entered the U.S. after January 28, 2022, and their Form I-94 does not have the new COA, then a CBP correction is possible while remaining in the U.S. using a deferred inspection site, for example.
- As to Forms I-94 issued by CBP on or before January 28, 2022, CBP directs these nonimmigrants to USCIS. Since USCIS only gets into the I-94 business when they issue an approval notice with the I-94 at the bottom of the I-797 form. From a practical perspective, E and L nonimmigrants with an I-94 issued prior to the existence of the new COAs for E and L nonimmigrant spouses 21 and over will need to depart the U.S. to apply for readmission to the U.S. to obtain a new I-94 with the appropriate code in the most expedited way.

The positive side of this situation is that the options remove the burdensome impediment of lengthy waits for USCIS to adjudicate I-765 employment authorization applications for E and L spouses. The downside is that it would have been much easier to allow a passport and I-94 with the new code to serve as a List A document, in order to be consistent with other work-authorized nonimmigrants "incident to status" (e.g. principal E and L nonimmigrants).

The ongoing lack of coordination between agencies implementing good ideas is apparent in this saga. USCIS would not need to mail anything out regarding the new codes if an L or E dependent spouse's I-94 combined with a valid passport and marriage certificate or the L-2 visa with the principal nonimmigrant's name had been deemed acceptable for Form I-9 purposes. Certainly, the [Social Security Administration](#)

has been using the marriage certificate approach for years to issue restricted status social security numbers to E and L spouses. Now, L and E dependent spouses must put together their personal puzzle in this transition when they do not possess a USCIS I-94 or CBP issued I-94 with the appropriate new code. Small steps are still good.

Bottom of I-797A with I-94 issued by USCIS without the new L-2 spouse code



I-94 Electronic Admission Record Issued by CBP with new L-2 spouse code

Most Recent I-94

Admission (I-94) Record Number : [REDACTED]

Most Recent Date of Entry: 2022 February 27

Class of Admission : L2S

Admit Until Date : 07/29/2023

Details provided on the I-94 Information form:

Last/Surname : [REDACTED]

First (Given) Name : [REDACTED]

Birth Date : [REDACTED]

Document Number : [REDACTED]

Country of Citizenship : Brazil

Section 2 of Form I-9 when the new COA I-94 is presented for work authorization with an example of List B identity document choice by an employee. *Note, if the unexpired I-94 issued by USCIS and I-797 did not have the correct new COA, then the employer would need to look at the USCIS notice described in this alert. That information would typically be inserted in the information box of Section 2 of Form I-9. As an idea, perhaps we insert the following: "USCIS notice as to dependent L/E COA reviewed." We will see.*

Employee Info from Section 1		Last Name (Family Name) NATIONAL	First Name (Given Name) FOREIGN	M.I. B	Citizenship/Immigration Status 4
List A Identity and Employment Authorization		List B Identity		List C Employment Authorization	
Document Title	Document Title State Driver's License or ID (example)	Document Title Form I-94-insert COA			
Issuing Authority	Issuing Authority	Issuing Authority			
Document Number	Name of State	DHS			
Expiration Date (if any) (mm/dd/yyyy)	Document Number	Document Number			
	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX			
	Expiration Date (if any) (mm/dd/yyyy)	Expiration Date (if any) (mm/dd/yyyy)			
	00/00/0000 valid	00/00/0000 valid			
Document Title	Additional Information		QR Code - Sections 2 & 3 Do Not Write In This Space		
Issuing Authority	NOTE for purposes of this article- NEVER ASK FOR SPECIFIC DOCUMENTS - EMPLOYEE DECIDES				
Document Number	EXAMPLE include word "valid" just to underscore the requirement				
Expiration Date (if any) (mm/dd/yyyy)	At present, a foreign passport is not listed as a List B document.				
Document Title					
Issuing Authority					
Document Number					
Expiration Date (if any) (mm/dd/yyyy)					

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

ABOUT THE AUTHOR



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