

Recording Form I-797A on the Form I-9

Question: USCIS has approved my employee’s Form I-129 and we have received the Form I-797A showing the approval. Which end date do I use for Form I-9 purposes? The visa end date in the top right or the Form I-94 end date on the bottom left?

Answer: Both; the visa end date is the last day the individual is authorized to work and the Form I-94 date is required for Section 2 and 3 completion.

Analysis: Hundreds of thousands of foreign nationals are annually admitted to the United States pursuant to a work visa and even more change their visa status while in the United States. Certain individuals are eligible for a discretionary 10 day “grace period” at the beginning and end of the visa validity period. This means that the period of stay reflected on the Form I-94 is *longer* than the period of authorized work.

For example, an H-1B visa may be valid from 1/1/2023 through 12/31/2025. That visa holder’s I-94, however, may reflect a validity period of 12/22/2022 through 1/10/2026. This allows the employee to enter the United States 10 days prior to, and depart the United States 10 days after, the visa validity period.

Foreign national employees whose visas are approved while they are in the United States are issued a Form I-797A; those outside of the United States are issued a Form I-797B.

CONTACT US:

Certiphi Screening, Inc.

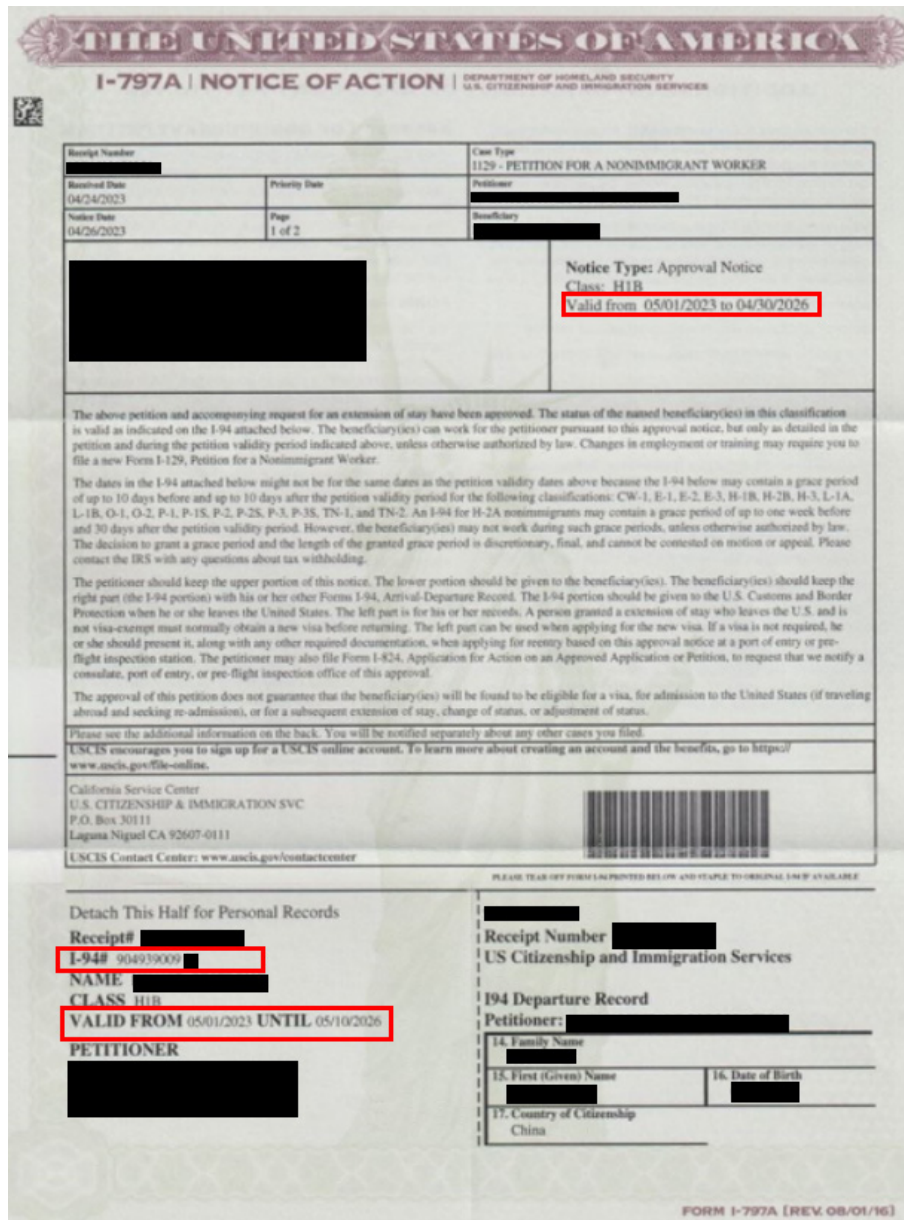
certiphi.com

888.260.1370

RECORDING DATES FOR FORM I-797A / FORM I-94

Employers who are presented with a **Form I-797A, Notice of Action**, during Form I-9 completion should ensure that the visa end date (in the top right corner) is accurately recorded in Section 1 of Form I-9 in the “Alien authorized to work until”

field. If this date is not recorded, employers should have their employee update the field promptly. When completing Section 2 of Form I-9, employers should record the Form I-94 expiration date. The **Form I-94** is found at the bottom of the Form I-797A. As you can see below, the visa end date is 10 days prior to the Form I-94 expiration date.



THE UNITED STATES OF AMERICA
I-797A | NOTICE OF ACTION | DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Receipt Number [REDACTED]	Case Type I129 - PETITION FOR A NONIMMIGRANT WORKER
Received Date 04/24/2023	Priority Date [REDACTED]
Notice Date 04/26/2023	Page 1 of 2
[REDACTED]	Beneficiary [REDACTED]
Notice Type: Approval Notice Class: H1B Valid from: 05/01/2023 to 04/30/2026	

The above petition and accompanying request for an extension of stay have been approved. The status of the named beneficiary(ies) in this classification is valid as indicated on the I-94 attached below. The beneficiary(ies) can work for the petitioner pursuant to this approval notice, but only as detailed in the petition and during the petition validity period indicated above, unless otherwise authorized by law. Changes in employment or training may require you to file a new Form I-129, Petition for a Nonimmigrant Worker.

The dates in the I-94 attached below might not be the same dates as the petition validity dates above because the I-94 below may contain a grace period of up to 10 days before and up to 10 days after the petition validity period for the following classifications: CW-1, E-1, E-2, E-3, H-1B, H-2B, H-3, L-1A, L-1B, O-1, O-2, P-1, P-1S, P-2, P-2S, P-3, P-3S, TN-1, and TN-2. An I-94 for H-2A nonimmigrants may contain a grace period of up to one week before and 30 days after the petition validity period. However, the beneficiary(ies) may not work during such grace periods, unless otherwise authorized by law. The decision to grant a grace period and the length of the granted grace period is discretionary, final, and cannot be contested on motion or appeal. Please contact the IRS with any questions about tax withholding.

The petitioner should keep the upper portion of this notice. The lower portion should be given to the beneficiary(ies). The beneficiary(ies) should keep the right part (the I-94 portion) with his or her other Forms I-94, Arrival-Departure Record. The I-94 portion should be given to the U.S. Customs and Border Protection when he or she leaves the United States. The left part is for his or her records. A person granted an extension of stay who leaves the U.S. and is not visa-exempt must normally obtain a new visa before returning. The left part can be used when applying for the new visa. If a visa is not required, he or she should present it, along with any other required documentation, when applying for reentry based on this approval notice at a port of entry or pre-flight inspection station. The petitioner may also file Form I-824, Application for Action on an Approved Application or Petition, to request that we notify a consulate, port of entry, or pre-flight inspection office of this approval.

The approval of this petition does not guarantee that the beneficiary(ies) will be found to be eligible for a visa, for admission to the United States (if traveling abroad and seeking re-admission), or for a subsequent extension of stay, change of status, or adjustment of status.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

USCIS encourages you to sign up for a USCIS online account. To learn more about creating an account and the benefits, go to <https://www.uscis.gov/file-online>.

California Service Center
U.S. CITIZENSHIP & IMMIGRATION SVC
P.O. Box 30111
Laguna Niguel CA 92607-0111
USCIS Contact Center: www.uscis.gov/contactcenter

PLEASE TEAR OFF FORM I-94 PRINTED BELOW AND RETURN TO ORIGINAL SOURCE AVAILABLE

Detach This Half for Personal Records	[REDACTED]
Receipt# [REDACTED]	Receipt Number [REDACTED]
I-94# 904919009 [REDACTED]	US Citizenship and Immigration Services
NAME [REDACTED]	I94 Departure Record
CLASS H1B	Petitioner: [REDACTED]
VALID FROM 05/01/2023 UNTIL 05/10/2026	14. Family Name [REDACTED]
PETITIONER [REDACTED]	15. First (Given) Name [REDACTED]
	16. Date of Birth [REDACTED]
	17. Country of Citizenship China

FORM I-797A [REV. 08/01/16]

For the Form I-797A, the visa end date is in the top right corner and the Form I-94 expiration date is in the bottom left.

I attest, under penalty of perjury, that I am (check one of the following boxes):

<input type="checkbox"/>	1. A citizen of the United States
<input type="checkbox"/>	2. A noncitizen national of the United States (See instructions)
<input type="checkbox"/>	3. A lawful permanent resident (Alien Registration Number/USCIS Number): N/A
<input checked="" type="checkbox"/>	4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): 04/30/2026 Some aliens may write "N/A" in the expiration date field. (See instructions)
<p>Aliens authorized to work must provide only one of the following document numbers to complete Form I-9: An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.</p> <p>1. Alien Registration Number/USCIS Number: A 123123321 Alien Number</p> <p>OR</p> <p>2. Form I-94 Admission Number: N/A</p> <p>OR</p> <p>3. Foreign Passport Number: N/A</p> <p>Country of Issuance: N/A</p>	
QR Code - Section 1 Do Not Write In This Space	

Enter the visa end date in the "An alien authorized to work until" expiration date in Section 1.

Employee Info from Section 1	Last Name (Family Name)	First Name (Given Name)	M.I.	Citizenship/Immigration Status
List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title Foreign passport, work-authorized nonimmigrant		Document Title N/A		Document Title N/A
Issuing Authority China		Issuing Authority N/A		Issuing Authority N/A
Document Number 12323123123		Document Number N/A		Document Number N/A
Expiration Date (if any) (mm/dd/yyyy) 01/01/2030		Expiration Date (if any) (mm/dd/yyyy) N/A		Expiration Date (if any) (mm/dd/yyyy) N/A
Document Title Form I-94/I-94A		Additional Information		QR Code - Sections 2 & 3 Do Not Write In This Space
Issuing Authority U.S. Citizenship and Immigration Serv				
Document Number 213123123a1				
Expiration Date (if any) (mm/dd/yyyy) 05/10/2026				
Document Title				
Issuing Authority				
Document Number				
Expiration Date (if any) (mm/dd/yyyy)				

Enter the Form I-94 expiration date as the expiration date in Section 2.

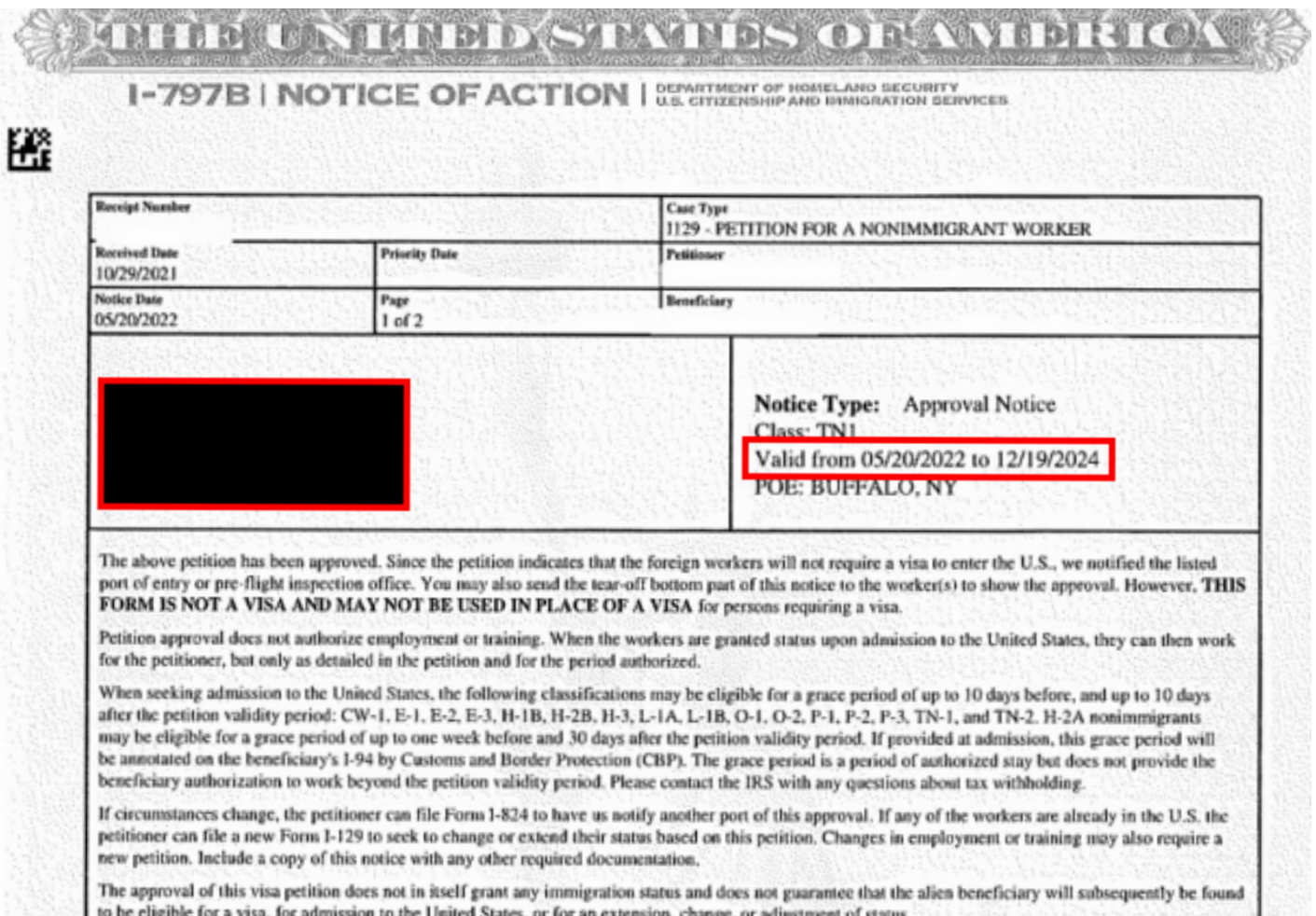
This process is easy for those completing Section 1 and 2 because there is a field for each date on Form I-9. It is more challenging for employers completing a Section 3 for foreign national employees presenting a Form I-797A. Employers


can only record the Form I-94 expiration date on the Form I-9, so they must record the work authorization date elsewhere, or, if you are using an electronic system, you must ensure that the system is documenting it appropriately.

RECORDING DATES FOR FORM I-797B / FORM I-94

For foreign national employees who are issued their visa outside of the country, and are not issued a Form I-797A, the completion process is more difficult but not unmanageable. These foreign national employees will be issued a Form I-94, accessible only through the Customs and Border Protection [website](#). That Form I-94 will not

contain any employer/sponsor information or the visa end date, so you must look to the **Form I-797B, Approval Notice** for this information. As shown below, both the petitioner and the visa end date are listed. As with the Form I-797A, employers completing Section 3 of Form I-9 will have to record the Form I-94 expiration date in Section 3 and will have to record the work authorization date elsewhere, or ensure its appropriate documentation within your electronic system.



Receipt Number		Case Type	
Received Date 10/29/2021	Priority Date	1129 - PETITION FOR A NONIMMIGRANT WORKER	
Notice Date 05/20/2022	Page 1 of 2	Petitioner	
		Beneficiary	
		Notice Type: Approval Notice Class: TN1 Valid from 05/20/2022 to 12/19/2024 POE: BUFFALO, NY	

The above petition has been approved. Since the petition indicates that the foreign workers will not require a visa to enter the U.S., we notified the listed port of entry or pre-flight inspection office. You may also send the tear-off bottom part of this notice to the worker(s) to show the approval. However, **THIS FORM IS NOT A VISA AND MAY NOT BE USED IN PLACE OF A VISA** for persons requiring a visa.

Petition approval does not authorize employment or training. When the workers are granted status upon admission to the United States, they can then work for the petitioner, but only as detailed in the petition and for the period authorized.

When seeking admission to the United States, the following classifications may be eligible for a grace period of up to 10 days before, and up to 10 days after the petition validity period: CW-1, E-1, E-2, E-3, H-1B, H-2B, H-3, L-1A, L-1B, O-1, O-2, P-1, P-2, P-3, TN-1, and TN-2. H-2A nonimmigrants may be eligible for a grace period of up to one week before and 30 days after the petition validity period. If provided at admission, this grace period will be annotated on the beneficiary's I-94 by Customs and Border Protection (CBP). The grace period is a period of authorized stay but does not provide the beneficiary authorization to work beyond the petition validity period. Please contact the IRS with any questions about tax withholding.

If circumstances change, the petitioner can file Form I-824 to have us notify another port of this approval. If any of the workers are already in the U.S. the petitioner can file a new Form I-129 to seek to change or extend their status based on this petition. Changes in employment or training may also require a new petition. Include a copy of this notice with any other required documentation.

The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.

For the Form I-797B, the visa end date is in the top right corner and the Form I-94 expiration date is on the Form I-94, accessible only through the Customs and Border Protection website.

If you have any questions about properly recording the Form I-797A or I-797B on the Form I-9, please contact your account manager. ■