

The ABC's of Immigration: Preserving Green Card Status During Trips Abroad

by Greg Siskind

Can extended trips abroad effect lawful permanent residence status, or create concerns for citizenship applications?

It is an all too common situation -- after years of bureaucratic entanglements, a person finally obtains lawful permanent residence in the US, only to find they still have business or family concerns that will keep them out of the US for an extended period of time. Often, the lawful permanent resident (LPR) will try to reenter the US, only to have a port of entry officer or consular official tell them they have abandoned their permanent residence status. Absences from the US of more than six months raise a rebuttable presumption that an individual intends to abandon permanent resident status, and absences of more than one year invalidate the green card as an entry document unless the person holds a valid re-entry document. This means that a foreign national who has been continuously abroad for more than 12 months may still be a permanent resident, but a special immigrant visa issued by a US consul may be necessary to re-enter the US unless the individual has a valid re-entry permit.

While an extended absence alone is not grounds for revoking permanent residence, it is one factor the government considers very important. Extended absences may also adversely affect US citizenship eligibility, despite the existence of a re-entry permit. Therefore, when planning an extended trip abroad, it is necessary to plan ahead to avoid abandonment.

Furthermore, Congress did change the law several years ago to hold that permanent residents who leave the US for more than six months can be held inadmissible if there is something in their background now that would have barred them from getting a green card had it been true at the earlier date. For example, if one cannot meet the public charge requirements, security clearance or has gotten a communicable disease, then they could face problems reentering. For most, this will probably not be a major concern.

What can a permanent resident do to prevent abandonment of the immigrant status in the case of an extended absence from the US?

Among the many factors that influence the decision on abandonment are the length and reason for the absence and the number and type of connections the LPR maintains in the US. There are many steps a LPR can take to demonstrate his or her intention to maintain their status in the US.

Of course, the LPR can obtain a re-entry permit if the absence is to be longer than one year. A re-entry permit, filed on Form I-131, is usually granted for two years and serves as recognition by the USCIS that the individual does not intent to abandon permanent residence despite prolonged absence from the US. This application is typically submitted by the individual while physically present in the US and must be used prior to the expiration of the document, or two years from the date of issuance. If the holder of a re-entry permit is a conditional permanent resident, the permit will be valid to the date the conditional resident must apply for removal of conditional status.

One of the most important factors in preserving permanent residence is the proper filing of US tax returns while abroad and filing as a US resident and not as a nonresident. Because of international tax laws, there will often be no tax owed to the US government, but failure to file a return is almost always considered a sign that LPR status has been abandoned. The LPR should also maintain a bank account and credit cards in the US. These accounts should be as active as possible. For example, if the LPR is employed abroad, the salary should be

deposited in the US account. The LPR should also continue to renew his/her US driver's license. If possible, the LPR should purchase property in the US.

If the LPR's absence is due to employment, a letter from the employer detailing the terms and length of employment is very important. If the absence is for family or personal reasons, these should be well documented. While such reasons are acceptable, the ease with which they can be manipulated means they should be very well documented.

However, many of these same factors are involved in the decision of whether to issue such a permit, and even with a re-entry permit the LPR can still be deemed to have abandoned status.

What should a lawful permanent resident do while traveling abroad to prevent abandonment of lawful permanent resident status?

It is important that the LPR traveling abroad for an extended period be prepared to document his/her intent to remain a US resident if questioned by immigration or consular officials. One of the best ways to do this is to carry copies of relevant documents in a single location so that they can be presented readily to officials. Among these documents should be copies of past tax returns, deeds showing property ownership, records of bank account activity, relevant letters from employers, and letters explaining the purpose of the extended absence.

A commonly held but mistaken assumption is that a visit every year to the US will preserve LPR status. While an LPR needs only the green card to reenter the US after an absence of less than one year, this is not enough to indicate the intent to remain a resident of the US. The LPR must take additional action to preserve their status as mentioned above.<http://www.lgirtf.org>

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