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Maintenance of LPR Status, Here and Abroad

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Maintenance of LPR Status, Here and Abroad

Or Everything you need to know about maintaining lawful permanent residency. (In thirty minutes or less.)

For many permanent residents the obtainment of their residency is the cumulation of years of effort. Whether obtained as asylees, spouses of US citizens (USC's), or tech workers who have been backlogged since the early aughts, becoming a permanent resident can at times feel like an end unto itself. However, if those permanent residents need to travel, or work abroad, they may find themselves at risk of abandoning their status.

The perils of unexpected absences were highlighted by the pandemic, when people intending to travel for a few days or weeks found themselves in the position of remaining outside of the country for far longer than they initially intended. While the pandemic heightened awareness, the impermanence of permanent residency has long been a defining characteristic of the status.

PROTECTING AGAINST LOSS OF STATUS

Aside from the protecting their permanent residency in the United States an LPR also must consider the implications of any absences with regards to future plans to become citizen of the United States. While not the focus of this article, some of the remedies included herein will be helpful in maintaining status, with an eye towards naturalization in the future.

When a lawful permanent resident travels abroad and then returns to the United States they are not considered to be "seeking admission" at the border. However, under INA §101(a)(13)(C) there are six exceptions to this rule, for our purposes we are interested in the first two, if a resident:

1. has abandoned or relinquished permanent resident status;
2. has been absent from the United States for a continuous period of more than 180 days;

When this occurs USCIS takes the position that if an LPR remains outside U.S. for more than one year, not only is the “green card” invalid per 8 CFR 211.1(a)(2), their residency also has been abandoned. *Diosa-Ortiz v. Ashcroft*, 334 F.Supp.2d 27 (D. Mass. 2004). Absences of less than one year, but over 180 days may raise a rebuttable presumption of abandonment of permanent residency.

In either case, the onus is on the permanent resident to proactively work to maintain their residency particularly if they know ahead of time that they will have to be outside of the United States for more than six months.

PLANNING FOR TRAVEL ABROAD

Lawful permanent residents are required to have the intent to permanently reside in the United States. If they must travel outside of the United States for an extended period, then they are required to take affirmative steps to show their intention to maintain their residency. Individuals with sufficient notice that they will have to work or live abroad for an extended period of time are advised to apply for a reentry permit (Form I-131).

REENTRY PERMITS FOR LONG TERM ABSENCES (I-131)

There are various reasons why an individual with permanent residency may need to travel abroad for an extended period that exceeds one year. One of the most common reasons for an extended period outside of the United States is work. Oftentimes individuals obtain their permanent residence and are subsequently transferred by their employer outside of the United States. In other instances, a permanent resident may need to care for a relative abroad and is planning to be outside of the United State for at least one year (but less than two years).

The key difference between a reentry permit and the other forms of relief mentioned below is that an I-131 should involve a good amount of premeditation. On occasion it’s not as much notice as

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