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### Maintaining A Green Card While Working Abroad

PERMANENT RESIDENTS TEMPORARILY LEAVING THE COUNTRY NEED TO PLAN AHEAD

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As businesses become more global, companies are transferring more and more employees, including managers, executives, and lawyers, to work at facilities outside of the United States. This can lead to complications, however, when the employee is a U.S. lawful permanent resident.

A lawful permanent resident (LPR/green card holder) is a foreign national who has applied for (and been granted) permission to permanently reside in the United States. While permanent resident status offers a number of privileges, an LPR, if not careful, can lose permanent resident status. This article discusses how to preserve LPR status while living abroad, including some common pitfalls employers and LPR employees should avoid and issues they should address before the LPR leaves the United States.

#### Abandoning Your Green Card

LPR status can be abandoned either affirmatively or unintentionally.

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One common way LPRs can unintentionally abandon their status is by staying outside of the United States for extended periods of time. Specifically, the U.S. Citizenship and Immigration Services (USCIS) has taken the position that LPRs are presumed to have abandoned their status if they are absent from the United States for longer than one year. Returning to the United States once a year is clearly not enough.

The USCIS and Customs and Border Protection (CBP) determine on a case-by-case basis whether an LPR has abandoned LPR status. The LPR must be able to demonstrate (with concrete evidence) the intention to return to the United States after living abroad. In assessing an LPR's intent to return to the United States, the USCIS considers a number of factors, for example, whether the LPR files tax returns in the United States (this is absolutely essential), has family ties in the United States, owns property in the United States, has a valid driver's



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license, and maintains a bank account and credit cards.

Thus, it is critical that the LPR continues to maintain substantial/documentable ties to the United States when living/working abroad. Further, to reduce questions at the border, we recommend that LPRs return to the United States as often as possible (ideally at least every 6 months).

#### Keeping Your Green Card

To decrease the risk of abandoning their green card, LPRs who expect to be outside the United States for an extended period of time should consider obtaining a reentry permit from

the USCIS before departing the United States. Those LPRs who possess a valid reentry permit and who are otherwise admissible cannot be found to have abandoned their status solely based on the duration of their absence from the United States (though, as noted above, the LPR should maintain ties to the United States, which includes returning to the United States as often as possible). However, merely possessing a reentry permit will not protect an LPR who lacks the intent to maintain permanent residency. Consequently, it is critical that (even with a valid reentry permit) an LPR living and/or working abroad continue to maintain substantial ties to the United States.

It is recommended that the reentry permit be obtained before the LPR leaves the United States. A reentry permit application can only be filed when the individual is physically present in the United States. Further, after filing the application, the employee will need to be in the United States or return for an appointment to have fingerprints taken in the United States within 120 days. Accordingly, it is best to file this application at least three months prior to leaving the United States, if possible. If granted, a reentry permit is generally valid for two years from the date of issuance, and an LPR may only apply for a new or extended reentry permit while in the United States.

### **Concerns For Families**

While abroad, the LPR's family circumstances may change. For example, LPRs who marry a nonpermanent resident while abroad may wish to obtain LPR status for their spouse.

Generally, LPRs can apply for a green card for their new spouse to become an LPR. This application (called a Form I-130 petition) typically falls in the "second preference" or "2A category." Unfortunately, the 2A category is currently subject to a long backlog, and it may take more than three years for the spouse to gain LPR status; however, if (while the Form I-130 petition is pending) the LPR abandons LPR status (either affirmatively or unintentionally), the USCIS will not

grant the spouse's immigrant petition. Consequently, it is critical that an LPR living abroad (especially with a pending Form I-130) maintain substantial ties to the U.S.

Finally, the LPR may have a child while abroad. If a child is born abroad to an LPR mother, the child may enter the United States as an LPR if the child's application for admission to the United States is made within two years of the child's birth. The LPR mother, however, must be otherwise admissible and must apply for readmission for the first time since the birth of the child. If the child is not eligible for this exception (for example, the child's father (not mother) is not an LPR), the LPR can file a Form I-130 on the child's behalf. Nonetheless, the child will be subject to the backlog, as discussed above.

This can all lead to an LPR wanting to abandon green card status. LPRs who are abroad can affirmatively abandon LPR status by filing a Form I-407, Abandonment of Permanent Resident Status, with the local U.S. Embassy or Consulate (and surrender their original green card). In contrast, even for LPRs who do not affirmatively abandon their LPR status, a CBP officer may nevertheless determine that their permanent residency has been abandoned. If the

**Those lawful permanent residents who possess a valid reentry permit and who are otherwise admissible cannot be found to have abandoned their status solely based on the duration of their absence from the United States.**

CBP considers the status abandoned, the officer will request that the LPR complete Form I-407 and sign a statement abandoning residency. An LPR may contest the CBP officer's determination by refusing to voluntarily surrender residency and is entitled to have the CBP officer's determination reviewed by an immigration judge. If necessary, the LPR can also appeal the immigration judge's determination to the Board of Immigration Appeals.

### **Conclusion**

To avoid losing permanent resident status, LPRs taking a position abroad should plan ahead. They should be sure to maintain substantial ties to the United States, and, if they will be living abroad for an extended period of time, should consider a reentry permit. ■