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PRESERVING LEGAL PERMANENT RESIDENT STATUS AND ELIGIBILITY TO NATURALIZE TO U.S. CITIZENSHIP

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Introduction

Once an individual has successfully secured legal permanent resident (LPR) status, commonly referred to as securing a “green card,” they may be worried about how not to lose this prized status. To maintain LPR status you must intend to make the United States your permanent home. For people who, for whatever reason, travel frequently and spend significant amounts of time outside the U.S. these absences can place their LPR status in jeopardy. The Covid-19 pandemic that rocked the globe starting in early 2020 has presented challenges, especially for LPRs who due to travel restrictions or health concerns have unexpectedly found themselves outside the U.S. for longer than anticipated, in a situation where they could lose their LPR status.

This article addresses the circumstances under which prolonged absences can jeopardize your LPR status and what steps you can take to prevent losing it. It also addresses the impact that extensive absence from the U.S. can have on one’s eligibility to apply for U.S. citizenship down the line.

What Is Legal Permanent Resident Status?

An LPR is someone who immigrates to the U.S. with the intention of making the U.S. their permanent home. The two most common paths individuals use to apply for LPR status are through employment (i.e., where a U.S. employer petitions for an employment-based green card), or through a qualifying family relationship (i.e., where a U.S. citizen family member petitions for a green card for a spouse, child, parent or sibling). If successful, the LPR can then immigrate to the U.S. if they were abroad, or they can adjust to LPR status if they were already present in the U.S. pursuant to some non-immigrant visa categories.

Although unconditional Green Cards are typically issued with a ten-year validity at a time, LPR status, as the name suggests, is indefinite (i.e. permanent) and does not expire except by abandonment or revocation. The Green Card itself has to be renewed every ten years but the LPR status does not require renewal.



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Upon securing LPR status, as noted above in order to maintain this status, the LPR is required to in fact make the U.S. their permanent home. LPR status accords them most, but not all rights held by U.S. citizens, except that an LPR can lose this status by abandonment or deportation.

U.S. Citizens	LPRs (Green Card holders)
No physical presence requirements.	Must maintain permanent home in the U.S. as well as meet continuous residence requirements.
Do not lose U.S. citizenship if they reside outside of the U.S.	Could lose LPR status on grounds of abandonment for prolonged absences from the U.S.
Only required to present a valid U.S passport for admission into the U.S. regardless of duration of absence from the U.S.	Entry into the U.S. requires a Green Card and foreign passport or if they have been outside the U.S. for longer than a certain period of time then an immigrant visa or re-entry permit may also be required.
Not deportable. ¹	Can be deported for committing “crimes of moral turpitude.”
May vote in federal, state and local elections.	Not eligible to register or vote in any U.S. elections.
No employment restrictions.	Not eligible to hold office or employment that specifically requires U.S. citizenship.

What Does Legal Permanent Residence Look Like?

There is a misconception among some LPRs that even if they live outside the U.S., they can maintain their LPR status by traveling to the U.S. at least once every six months. In fact, as Customs and Border Protection (CBP) becomes more and more stringent in screening foreign nationals arriving in the U.S., we are seeing an increasing number of cases in which permanent residents have been found to have abandoned their status.

¹ U.S. citizens are not deportable even if they hold citizenship of other countries. They can voluntarily renounce U.S. citizenship. If secured fraudulently, a citizen can be denaturalized.



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As a general rule an absence from the U.S. of less than six months does not raise a presumption of abandonment of residence. An absence of longer than six months but less than one year raises a rebuttable presumption that you may have abandoned residence. When an LPR is returning to the U.S after an absence of longer than six months but less than one year, they have the burden of satisfying the CBP officials at the port of entry that they have not abandoned their LPR status. An absence of longer than one year automatically results in abandonment of LPR status unless steps had been taken prior to the departure to preserve status. CBP officials have broad discretion to inquire into the purpose of your trip and the length of your absence which inquiry can touch on any number of factors such as the ones outlined before:

What Factors Determine Whether an LPR has abandoned LPR status?

1. Duration of Stay and Intent

- How long have you been outside the U.S.?
- What was your purpose for departing the U.S.?
- How long did you expect you would be outside the U.S. when you left?
- If you stayed outside the U.S. longer than intended, why? Were factors such as illness of yourself or a family member involved?
- When you departed did you intend to return to the U.S. to live/work?

2. Employment

- Did you have a job in the U.S. when you left? (Do you now?)
- When was the last time you received a salary in the U.S.?
- Do you have a job in your home country? If so, is it with a U.S. or foreign company?

3. Property/Residence

- Did you have property in the U.S. when you left? (Do you now?)
- Did you ever live at that property?



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- Do you plan to stay there when you return to the U.S.?
- Did you leave any of your belongings in the U.S. when you left?
- Do you own property in your country of birth?

4. Family

- Did you have family in the U.S. when you left? (Do you now? If so, what is their immigration status?)
- Do you have any family in your country of birth?
- What is the immigration status of your spouse/children (if applicable)?
- Where have your children received their schooling?

Financial Ties/Taxes

- Do you have a bank account/investments in the U.S.?
- Have you filed federal income taxes while outside the U.S.?

Other

- Did you ever apply (or attempt to apply) for a re-entry permit?
- While you were away did you inquire at the local U.S. Consulate about your permanent resident status or attempt to take any actions to preserve it?

How Can an LPR Who Expects to have a Prolonged Absence Avoid a Finding of Abandonment?

LPRs who expect to be outside the U.S. for longer than one year can avoid a finding of abandonment by filing an application for a re-entry permit. This must be filed from within the U.S. prior to departure and the biometrics appointment, which requires the applicant to report to a USCIS office to have fingerprints taken must be done in the U.S. A re-entry permit can be used



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for admission back into the U.S. after an absence of longer than one year as long as the applicant can also show that they have not taken steps to abandon residence.

Because a prolonged absence is not something that is always planned or known in advance, there are occasions when an LPR may end up outside the U.S. for longer than a year having not obtained a re-entry permit in advance. In that situation, the Green Card will not be valid for re-entry. What such an LPR must do is apply for an immigrant visa from a U.S. consulate abroad prior to returning to the U.S.

How do LPRs Qualify to Naturalize to U.S. Citizenship?

Although there are special rules for certain specific categories of LPRs such as those serving in the military, certain religious ministers and national security assets, in general, to be eligible to apply to naturalize to U.S. citizenship, one must meet the following requirements:

1. Be above the age of eighteen (18);
2. Be an LPR (“Green Card” holder);
3. Must have resided in the U.S. as an LPR for a continuous period of five (5) years, unless one is married to a U.S. citizen with whom they have been residing in which case they must have been an LPR for a continuous period of three (3) years;
4. Must have been physically present in the U.S. for at least half of the period of continuous residence (i.e., 30 months or 18 months depending on the basis for applying);
5. Must have lived for three (3) months in the State or USCIS District in where you claim residence; and
6. Must be able to show good moral character.

When LPRs have been away from the U.S. due to frequent travel or inability to return to the U.S. for long periods of time, establishing physical presence, and in some cases continuous residence can be a challenge in the context of applying to naturalize.

Illustration: LPR X became a Green Card holder on January 1, 2018 on the basis of marriage to a U.S. citizen. On December 20, 2019, LPR X traveled to her country of birth for the holidays. During that visit LPR X learned of her father’s serious illness which caused her to delay her return to the US. However, before she could travel back to the U.S. in March, 2020, there were



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travel restrictions as a result of the Covid-19 pandemic which prevented her return. LPR X was only able to return to the U.S. on November 1, 2020.

As of January 1, 2021, LPR X had been an LPR for a continuous period of three years, meeting criteria (3) above. However, LPR X will not be able to meet the physical presence requirement because she would have been outside the U.S. for more than half of the three-year period immediately preceding her application.

Because LPR X was away for less than one year, she was able to use her green card for entry, although she had some explaining to do at the port of entry upon her return including having to establish with documentary evidence that she had maintained strong ties to the U.S. and that the reason for her prolonged absence was unplanned.

When counting the total number of days you have been out of the U.S., include all trips you have taken outside the country. This includes short trips and visits to Canada and Mexico. For example, if you go to Canada for a weekend, you must include that trip when you are counting how many days you have spent out of the country. Generally, spending part of a day in the US counts as a whole day in the US by USCIS standards. Some categories of applicants (such as US government employees overseas) are exempt from the physical presence requirement.

Spouses of U.S. citizens who are outside of the U.S. due to the U.S. citizen spouse's employment with a with a U.S. company (or certain international organizations) are eligible to naturalize to U.S. citizenship notwithstanding that they do not meet the physical presence test. In addition, LPRs who have to be outside the U.S. can file an N-470 application to preserve residence for purposes of naturalizing. These special rules must be carefully reviewed with an attorney to ascertain eligibility for these exceptions.

Permanent residents who spend substantial time outside the US should consider the above requirements carefully before applying for naturalization. Excellent resources are available on the USCIS website at <https://www.uscis.gov/citizenship>.

Conclusion

LPRs who expect to have a prolonged absence from the U.S. must carefully review the above requirements to ensure that they avoid being denied entry back into the U.S. or inadvertently losing eligibility to naturalize to U.S. citizenship. To the extent they can, LPRs should avail



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themselves of preventative measures to preserve the benefits of their legal permanent resident status.