

MAINTAINING LAWFUL PERMANENT RESIDENT STATUS

Maintaining Your Status

Your status is only valid for as long as you intend to permanently reside in the U.S. If you abandon your permanent ties to the U.S. and move to another country, your status and admission will be in question when you attempt readmission at a U.S. border. It is the USCBP Officer's job to ensure that you are a valid returning resident each time you wish to reenter the U.S. If you depart and remain outside the U.S. for more than twelve months, you will be presumed to have abandoned your Permanent Resident status and the USCBP Inspecting Officer may hold you in exclusion proceedings. In addition, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996 places the burden on the permanent resident to convince USCBP that he or she has not abandoned permanent residence after an absence of 180 days (6 months) or more (INA § 101(a)(13)(C)(ii)). This provision makes it even more imperative that the resident alien who is planning a lengthy absence abroad perform the necessary steps to safeguard his/her permanent resident status. Permanent Resident status is not automatically lost by a lengthy absence abroad, but an extended absence is one factor that is taken into account by the USCBP in judging whether a foreign national has abandoned his/her Permanent Resident status. The key factor in this determination is the foreign national's intentions, but a mere statement of intent to remain a U.S. resident is not controlling. The USCBP will look at objective facts that indicate a foreign national's intent. The major factors that are analyzed in determining a foreign national's intent to permanently reside in the U.S. include the following:

- Length of foreign national's absence;
- Purpose of foreign national's departure;
- Existence of facts indicating a fixed termination date for the stay abroad;
- Continued filing of U.S. tax returns as a resident of the U.S.;
- Maintenance of other ties with the U.S., such as ownership of property, bank accounts, credit cards, driver's license;
- Location of the foreign national's close family members;
- Location and nature of the foreign national's employment, e.g., U.S. vs foreign employer, permanent vs temporary employment abroad, fixed term employment contract, etc.

If you are arrested or convicted of certain offenses and crimes, USCIS can begin removal proceedings against you. For controlled substance violations, a conviction is not required and USCIS can rely on facts and admissions to begin removal proceedings.

You must keep USCIS advised of any changes of address, but you may technically use a contact address (a P.O. Box or relative's address is satisfactory). The Form AR-11 is available on-line at the USCIS website at www.uscis.gov. You may e-file the AR-11, but we suggest you print a copy of the form prior to "sending" it, and copy the acknowledgement page.

We recommend that you should continue to renew your U.S. driver's license.

Your Resident Alien Card should show an expiration date in 10 years. This is not an expiration of your status, but merely an effort to get everyone to renew their photos and obtain the latest version of the ever-changing card.

If you lose your card at any time you can file a Form I-90 with USCIS to replace it. When you file, USCIS prefers that you show how you lost it and would like to see a police report if it is stolen. If this is the case at some point, you can file a written report at any police station. To be safe, we suggest you keep a copy of your card (and I-551 stamp page in your passport) in a safe place, in addition to sending this office a copy.

Extended Stays Outside the U.S.

If you will be abroad for a considerable period of time, you must take certain steps to assure that your permanent resident status will not be lost.

As a Permanent Resident you are generally obligated to claim the U.S. as your tax residence and claim your worldwide income. Failure to file a tax return or to file as a nonresident is inconsistent with the maintenance of your Permanent Resident status. There are other tax issues that you should be aware of, so please advise your C.P.A. or Accountant of your new status. Ensure this individual is knowledgeable about issues affecting Permanent Resident versus U.S. Citizens.

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If you must depart the U.S. for temporary employment or other legitimate personal reasons and expect to be out for more than twelve months, but not more than twenty-four months, you can file for advance permission and request the issuance of a Reentry Permit. If you plan to be outside the U.S. for more than 6 months, we recommend that you apply for a Reentry Permit before you depart the U.S. A Reentry Permit, which requires your physical presence in the U.S. when the application is filed through to the attendance and completion of the biometrics appointment at the local Application Support Center (ASC), is valid for up to a two year period. You need not be present while the application is pending, but again you must be present on the date of submission through to the completion of your biometrics appointment at the local ASC. This permit will allow you to reenter the U.S. upon an extended absence within that two year validity period. However, it should be noted that the Reentry Permit does not guarantee your readmission to the U.S. You must still be admissible upon return to the U.S. and may not be excludable under the grounds of exclusion. You should follow the above-mentioned guidelines for overcoming the presumption of abandonment after a lengthy absence abroad. Please advise us if this becomes an issue.

It is important to note that a return trip once a year to the U.S. is not a guarantee that you will not have problems maintaining your permanent residency even if a Reentry Permit is issued.

Preserving Residence for Naturalization Purposes

To become a naturalized U.S. citizen, a Permanent Resident must reside continuously in the U.S. for a period of five years following lawful admission to permanent resident status, must not be outside the U.S. six months or more consecutively, and must be physically present in the U.S. for at 30 months. Maintaining continuity of residence for naturalization purposes is a different issue from maintaining permanent resident status. A foreign national may take steps to preserve the continuity during an extended absence if qualified to file Form N-470, Application to Preserve Residence for Naturalization Purposes. A foreign national may receive this benefit if he/she has been physically present and residing in the U.S. as a Permanent Resident for an uninterrupted period of one year prior to the absence and will be employed abroad by or under contract with U.S. corporation or majority owned subsidiary of U.S. corporation engaged in the development of foreign trade and commerce. The benefit must be requested before the foreign national has been absent from the U.S. for one year.