

OUR PRACTICE

Maintaining Permanent Resident Status

Being a permanent resident has many advantages: the right to live permanently in the U.S., ability to travel in and out of the U.S., the right to work freely for any employer in the U.S., the right to petition for spouses and children to obtain permanent residence, many U.S. Constitutional rights, entitlement to certain public benefits and the right to apply eventually for naturalization. A permanent resident is still an alien, however, and must maintain evidence of his status. And permanent residence status may be lost through abandonment and other acts that render the permanent resident deportable or even inadmissible.

Below is an outline of the following topics within this page relating to maintaining permanent residency:

- **Obtaining, Replacing and Renewing a "Green Card"**
- **Loss of Permanent Residency: Travel and Its Consequences**
- **Reentry Permits and Naturalization**
- **Reporting a change of address**
- **How We Can Help**

Obtaining, Replacing and Renewing a "Green Card"

Form I-551 ("Permanent Resident Card," earlier versions "Alien Registration Card") is also popularly known as the "Green Card." Possession of the I-551 is evidence of a person's status as a permanent resident. At the time of the alien's entry with an immigrant visa, the immigration port inspector who admits the alien should stamp his visa, which then constitutes official temporary evidence of permanent residence while an I-551 is mailed to the alien. Someone who is granted adjustment of status no longer receives a temporary stamp without special need, but the I-551 normally comes in the mail within a few weeks. If the I-551 card does not come within 90 days, the permanent resident should call USCIS customer service or even submit Form I-90 to USCIS. He should also make an Infopass appointment with the local USCIS office to seek to obtain a "temporary I-551 stamp" in his passport.

A Permanent Resident Card must be replaced when the old one has been lost or destroyed, been issued before age 14, never arrived in the first place or become outmoded by a name change. The permanent resident submits Form I-90 to USCIS. Two year cards of "conditional permanent residents" are replaced through Form I-751 (obtained through marriage) or Form I-829 (obtained through investment).

Abandonment and Removal of Permanent Residents

Unlike citizens, permanent residents are subject to the same deportability grounds as other aliens. Even some inadmissibility grounds can apply to a permanent resident, particularly based on crimes, abandonment and entry without inspection, and relief from removal can be quite limited.

Surprisingly, a permanent resident can be found to have intentionally abandoned her status without really wanting to. Some factors used to determine the intent to abandon include: the alien's reason for leaving the

U.S.; the expectation that the trip would end shortly; use of a nonimmigrant (temporary) visa; maintenance of a permanent home and/or job in the U.S.; and other ties such as family, real estate, memberships, etc.

A permanent resident who anticipates an extended absence from the U.S. should take special care to file timely U.S. and state tax returns as a resident, maintain ties to the U.S., have a temporary reason for any departures and return from international travel with proof of these things. The safest course is always to spend in the U.S. at least half the time in any 12-month period. Short trips to the U.S. once a year will not necessarily preserve residency.

If a U.S. immigration port inspector believes that the traveler has abandoned permanent residence, the officer may take a "sworn statement" from the returning resident, who should insist on the opportunity to read and correct the statement before signing. The officer may (a) offer to have the traveler relinquish permanent residence and either (1) enter as a visitor or (2) withdraw the application for admission and return to the country he came from, or (b) "parole" the traveler into the U.S. and schedule the traveler either (1) for more questioning (with the opportunity to gather and submit more documents) at a CBP "deferred inspection" station within the U.S. or (2) for a hearing in immigration court for possible "removal." Someone who has had extended absences from the U.S. should be prepared for these possibilities and should be ready to insist on a hearing before a judge if he is not willing to give up permanent residence. A permanent resident who returns from a trip of more than six months at a time is treated in the law as an applicant for admission, which has the technical effect of subjecting the resident to the grounds of exclusion, which are broader than the grounds of deportation normally applicable to residents. Such a resident also has less rights in any removal proceedings that may arise from a government claim of abandonment of residence or grounds of removal (such as from crimes, misrepresentations, etc.)

Reentry Permits and Naturalization

Reentry permits, applied for using Form I-131, serve two purposes:

- When someone will be outside the U.S. for more than six months and less than two years. The reentry permit solves the problem that a Permanent Resident Card is not a valid entry document after a continuous absence for over one year. It also establishes a rebuttable intent to maintain permanent residence while outside the U.S.
- To serve as a passport equivalent for those permanent residents without passports.

The I-131 must be filed before the applicant leaves the United States. Although the reentry permit itself can't be extended, the alien may return his reentry permit (or adequately explain why he can't) and be issued a second reentry permit valid for another two years by making the application within the United States. A reentry permit will not prevent the break in continuous residence for naturalization purposes that results from an absence of more than one year, which requires a separate application for those eligible to file it.

The applicant must be physically present in the United States when filing the application and needs to remain in the U.S. until he or she has attended a scheduled biometrics appointment at a USCIS Application Support Center (ASC). The applicant may request in the application that the ASC appointment be expedited to take place within two weeks, but expediting is always discretionary and the mechanics are uncertain. A reentry permit does not immunize a resident from a finding of abandonment, and even a resident carrying a reentry permit should return to the U.S. with proof of having left intending to return, having paid U.S. taxes as a resident and having maintained ties to the U.S. A reentry permit does establish a presumption that the departure from the U.S. was temporary, but this presumption is rebuttable by the government. A permanent resident who has been outside the U.S. for more than one year without a valid reentry permit may apply to a U.S. consulate for a "returning resident visa," which will involve showing the maintenance of intent return and continuing ties to the U.S. Maintaining (and not abandoning) permanent residence is important for eligibility for

naturalization, but there are more naturalization requirements than that concerning residence and physical presence in the U.S. A reentry permit does not necessarily preserve residence or alleviate the need for physical presence for naturalization purposes. Some permanent residents can file special applications to preserve residence for naturalization even during extended absences, but this is different than a reentry permit.

Reporting a Change of Address

All foreign nationals, including permanent residents and children, must report residence address changes to USCIS by completing Form AR-11 and sending it to the Department of Homeland Security within ten days of any move within the U.S. Certain foreign nationals, who have been designated for Special Registration, must use form AR-11SR instead, but this requirement should end when a person becomes a permanent resident. USCIS now allows electronic reports of address change on its website.

How We Can Help

Baker Donelson's Immigration Group helps our clients, many of whom continue ties and travels to foreign lands, to maintain their U.S. permanent residence and naturalization eligibility by helping them plan their travels within manageable parameters, by helping them maintain and travel with helpful documents, and by filing for them various types of applications to demonstrate and preserve their U.S. residence. We advise clients on steps to take to be ready to demonstrate ties to the U.S. We defend clients in administrative and court proceedings regarding loss of permanent residence, including deferred inspection, removal proceedings or federal court litigation.