

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 should be in question when you attempt readmission at a U.S. border. It is the USCIBP 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 USCIBP Inspecting Officer may hold you in exclusion proceedings.

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 USCIBP in judging whether an alien has abandoned his/her Permanent Resident status. The key factor in this determination is the alien's intentions, but a mere statement of intent to remain a U.S. resident is not controlling. The USCIBP will look at objective facts that indicate an alien's intent. The major factors that are analyzed in determining an alien's intent to permanently reside in the U.S. include the following:

- Length of alien's absence;
- Purpose of alien'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 alien's close family members;
- Location and nature of the alien'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.

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996 has now placed a burden on the permanent resident to convince USCIBP that he or she has not abandoned permanent residence after an absence of 180 days (6 months) or more (INA § 101(a)(13)(C)(iii)). 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.

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.

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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.

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 Re-entry Permit. A Re-entry Permit, which must be applied for while you are physically present in the U.S. is valid for up to a two year period (you need not be present while the application is pending, but you must be present on the date of submission). This permit will allow you to re-enter the U.S. upon an extended absence within that two year validity period. However, it should be noted that the Re-entry 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 Re-entry 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. for one year or more at any given time, and must be actually physically present in the U.S. for at least half of that period. Please note that maintaining continuity of residence for naturalization purposes is a different issue from maintaining permanent resident status.

There is a conclusive presumption that an absence from the U.S. of one year or more automatically breaks the continuity of the alien's residence for naturalization purposes unless the alien take steps to preserve the continuity during the alien's absence. An alien 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; 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; alien requests the extended absence naturalization benefits before he or she has been absent from the U.S. for one year; alien proves that the absence is in furtherance of his/her overseas employment.

A timely application is required to receive this benefit. To apply for this benefit, the alien should submit USCIS Form N-470 and an affidavit from his/her employer.