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RIGHTS AND OBLIGATIONS UPON GRANT OF PERMANENT RESIDENCE IN THE UNITED STATES

As long as one maintains "a relinquished lawful permanent residence in the United States," he is entitled to the privileges and benefits of such permanent resident status in this country.

REPORTING REQUIREMENTS

Under current regulation there is no obligation to report on an annual basis to U.S. Citizenship and Immigration Services. Only changes of address must be reported and forms for that purpose are available at local post offices and Immigration Service offices.

TAX FILING STATUS

A permanent resident of the United States is presumed to be a "resident" for purposes of tax classification and is required to file a 1040 Resident Return. This does not preclude the possibility of claiming the "non-resident" deduction for overseas employment, which schedule is submitted in conjunction with a resident 1040 return.

FORM I-551 - THE "GREEN" CARD

A permanent resident is required to keep Form I-551 (the so-called "green card") in his possession at all times. The card is considered a valid document for purposes of re-entry into the United States if it is used within one year of the last departure and the applicant is returning from "a temporary absence abroad" to "an relinquished lawful permanent residence in the United States." The Immigration Examiner may inquire of the applicant and examine the documentation to determine if these are in fact the circumstances.

A permanent resident alien who reaches 14 years of age must within 30 days of his or her 14th birthday apply for a new green card, making application at the USCIS local office with jurisdiction over the alien's place of residence.

OVERSEAS TRIPS, ASSIGNMENTS, RE-ENTRY PERMITS

In accordance with Section 211 of the Immigration and Nationality Act, an immigrant seeking admission to the United States will be excluded if he is not in possession of a valid immigrant visa or other valid entry document. In accordance with Section 211(b) of the Act, those documentary requirements are waived for one who can qualify as a "returning resident immigrant," who is defined as an immigrant lawfully admitted for permanent residence who is returning from a temporary visit abroad.

If the request for entry into the United States is made within the year, the applicant need present only his passport and "green card" (unless he is returning from Canada or Mexico, in which case a green card alone is sufficient). In addition, he must establish that he is in fact a "returning" resident who has not abandoned such residence. Factors considered are:



The major factors that are analyzed in determining the alien's intent include but are not limited to:

1. The length of the alien's absence.
2. The purpose for the alien's departure.
3. The existence of facts indicating a fixed termination date for the stay abroad.
4. The continued filing of U.S. tax returns as a resident of the U.S.
5. The maintenance of other ties to the U.S., such as ownership of property, bank accounts, credit cards, and drivers licenses.
6. The location of the foreign national's close family members.
7. The location and nature of the alien's employment, e.g. U.S. versus foreign employer, permanent versus temporary employment abroad, fixed-term employment, etc.
8. Whether the alien applied for a Reentry Permit before leaving the U.S.
9. Where the alien's children have been educated.

The key factor in mitigating against an inference that an alien's lawful permanent residence status has been abandoned is a showing that the alien has a definite reason for proceeding abroad, that the visit abroad was expected to end within a relatively short period, fixed by some early event, and that the alien has held a continuing intention to return to the United States as a place of employment or business or as an actual home.

Documentary evidence of "residence" in the U.S. may include:

1. A driver's license issued within the past year and reflecting the same address as that recorded on the customs declaration form.
2. The name and address of a U.S. employer and evidence that a salary has been paid in the United States within a reasonable period of time.
3. Evidence of having filed U.S. federal income tax returns for the past year.
4. Evidence of property ownership, whether real or personal, in the U.S.

When one anticipates being outside of the United States for longer than 6 months, continuously, it is appropriate to obtain a Re-Entry Permit for presentation upon seeking entry into the United States, which will be permitted within the two year validity period of the Re-Entry Permit.

Whether the returning resident presents a green card within one year or a Re-Entry Permit within two years, the Immigration Examiner at the port of entry has a right to question the applicant and determine whether the applicant does in fact qualify as a returning resident.

EFFECT ON CITIZENSHIP ELIGIBILITY

Obtaining a Re-Entry Permit has no positive effect with regard to eligibility for naturalization. The instructions on an application for a Re-Entry Permit state as follows:

"If you intend to apply in the future for naturalization, absences from the United States for one year or more will generally break the continuity of your required continuous residence in the United States. If you intend to remain outside the United States for one year or more, you should file a Form N-470, Application to Preserve Residence for Naturalization Purposes."



The following principles are apparent from this warning on the Re-Entry Permit application:

1. One must start recounting five years (or three years in the case of a spouse of a U.S. citizen) if he or she has been continuously out of the United States for one year or more, even if a Re-Entry Permit has been granted!
2. All applicants must comply with the physical presence requirement which mandates that half the statutory period (five years or three years), in no particular chronological order, must be spent physically in the United States. There is no exception to this requirement for permanent resident employees of U.S. companies abroad.
3. An application to preserve residence for naturalization purposes (Form N-470) can only be filed in very limited circumstances and only exempts the applicant from the five-year residence continuity requirement. This application does not exempt the applicant from fulfilling the physical presence requirement!

In order to become a naturalized citizen of the U.S., an LPR must reside in the U.S. for a continuous period of five years after lawful admission to the U.S. as a permanent resident and prior to application for naturalization. If an alien is married to a U.S. citizen, he/she must reside in the U.S. for a continuous period of three years following lawful admission to the U.S. as a permanent resident and prior to application for naturalization. In addition, the LPR must physically reside in the U.S. for at least half of the period required for continuous residence. However, some aliens are exempted from these requirements, such as the spouses of U.S. citizens who are U.S. military personnel or have overseas employment with U.S. employers.

EMPLOYMENT WITH THE SPONSOR

A permanent resident of the United States who has obtained his residence based upon an offer of employment, has made a representation to the Immigration authorities that he intends to be so employed on a full-time, permanent basis. This does not preclude the possibility that at some time subsequent to lawful admission to the United States as a permanent resident, circumstances may change so that it is no longer appropriate for him or her to continue employment with such sponsor. If such event occurs subsequent to the lawful admission as a permanent resident and all parties were in good faith as to their intention up to and at the time of entry into the United States, the alien is entitled to keep such permanent resident status.

There is no set employment period required, but needless to say, the longer one remains in employment with the sponsor the less likely it is that the Immigration Service will challenge the good faith of the parties, subsequently.

LAWFUL PERMANENT RESIDENCE GAINED THROUGH MARRIAGE

Recent regulations promulgated by the Immigration Service grant "conditional" permanent resident status to aliens who marry U.S. citizens or "green card" holders, if they have been married for a period of less than two years on the date of granting of residence. Such conditional residence remains in effect for a period of two years. During the 90 day period preceding the second anniversary of the grant of conditional resident status, the alien spouse and the petitioning spouse (if not deceased) must file a petition to remove the condition. Failure to file such a petition within the prescribed time will result in the termination of the conditional resident status. Should the parties divorce within this two year period, the



Immigration Service, as a matter of discretion, may terminate the permanent resident status unless it can be established that the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through death of the spouse) by the alien spouse for good cause and the alien was not at fault in failing to meet the requirements.

For naturalization purposes, a conditional permanent resident is deemed to be a lawful permanent resident of the United States. The period of conditional permanent residence may be applied to the total residence required for naturalization. Further, an alien who is otherwise eligible for naturalization under any section of the Immigration and Nationality Act which requires no prior residence or specific period of physical presence within the United States, may be naturalized during the period of conditional permanent residence.

CONCLUSION

The rules, regulations and procedures leading to obtaining permanent residence in the United States are complex. It comes as a surprise to many people that the rules governing preservation and maintenance of permanent residence can be equally complex. It is therefore prudent to consult with an expert should there be a major change in circumstances, e.g. temporary assignment overseas, employment relocation, etc., so all the consequences can be carefully reviewed.

*** Adopted from other sources. This document provides general information. Case specific information should be discussed with an Attorney.**