

Permanent Residency Status is Not Necessarily Permanent: Travelers Beware

The saying “nothing is permanent” not only applies to life in general, but also to things many people think are truly permanent – like lawful permanent residency status, commonly called “green card” status. Unfortunately, it often surprises some (and usually under less-than-ideal circumstances) that the permanent resident status that they thought they could never lose and worked so hard to obtain can, in fact, be lost either through their actions, or in many cases, inactions. It will likely come as a further surprise to many that a permanent resident has no unconditional right to reenter or remain in the United States. Permanent residents are instead subject to examination by the U.S. government upon their return to the United States from a trip abroad to determine if the resident meets all the requirements to for reentry into the United States. Therefore, permanent residents must always be mindful that their permanent resident status may not be so permanent. With many people now traveling again after being subject to COVID-19 travel restrictions and fears of traveling due to the pandemic, the rate of permanent residents encountering allegations of abandoning their U.S. permanent resident status appears to be increasing.

For example, staying outside of the United States for a significant continuous period (six months is an often-used guide) but less than a year can create a presumption on the part of the U.S. government that the individual has abandoned their permanent resident status. There is generally no one perfect thing that a permanent resident who travels extensively outside the United States for long continuous periods can do to ensure that they will never run into the U.S. government asserting that an extended absence or absences shows they have abandoned the intent to call the United States their “permanent” home. For example, simply filing U.S. taxes, owning a house in the United States, maintaining a U.S. bank account, traveling to the United States for a few days every year, or having a close relative in the United States are rarely - by themselves - enough to save a permanent resident status from being challenged after a long period of absence from the United States.

A permanent resident, therefore, needs to build up an entire suite of evidence that they are keeping the United States as their permanent home. While having a U.S. residence is a good start, a permanent resident needs proof they regularly file U.S. taxes as a U.S. resident and maintain many other ties to the United

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States. This suite of evidence shows the permanent resident is keeping things ready for their continued long-term life in the United States.

A good example of what a permanent resident working overseas on a temporary assignment for a U.S. company can do to show proof of additional ties to the United States is to obtain a standing offer of employment for a job located within the United States that will begin upon the completion of their current international assignment. Additional good examples of proof of an intent to return to long-term residence in the United States include proof of maintaining an active U.S. bank account, a U.S. driver's license, active U.S. investment accounts, other U.S.-based sources of income, a family member living in the United States, maintenance of U.S. professional licenses, ongoing social or professional memberships with U.S.-based organizations or institutions, and ownership of other non-residential property in the United States.

It can also be very helpful if a permanent resident is able to be paid for any overseas employment through a U.S. entity or receive their pay through direct deposit into a U.S.-based bank account (or, if the above payment options are not available, immediate transfer of non-U.S. income into a U.S.-based bank account from which living and other expenses are paid); if their time outside the United States has a definite end date; or if the purpose for being outside of the United States for a long period was for a distinct, limited purpose, such as obtaining a degree, training, liquidating foreign assets, etc. This is not to say that all these factors are required to rebut the presumption of abandonment. Instead, keep in mind that numerous factors can be clubbed together, and usually one factor alone is not 100 percent determinative and does not usually work to rebut the presumption of abandonment. The two main factors that can really sink someone's case for maintaining permanent resident status are failure to file U.S. tax returns and claiming to be a non-resident when filing U.S. tax returns. Remember how well things turned out for Al Capone when he messed with the IRS? While filing U.S. tax returns is essential to maintaining permanent resident status, the amount of U.S. tax owed, if any, is not critical.

It is equally important that a permanent resident avoids establishing too many strong ties outside of the United States. Telling a U.S. Customs and Border Protection officer when returning to the United States after a trip of six months or more abroad that your only home is located outside the United States, that you are employed by a non-U.S. company outside of the United States, that all your salary is paid to you in non-U.S. dollars to a foreign bank account, and that you no longer have a U.S. driver's license, etc., is a good way to get into trouble quickly.



Maintaining lawful permanent residency status for permanent residents who travel abroad frequently and for long durations, either for family, work or pleasure, therefore requires planning and often additional expense to minimize the risk of losing permanent resident status. All permanent residents must keep in mind that permanent resident cards were never intended to be an easy “super tourist visa” that allows them to keep their lives outside the United States long-term while allowing them to travel to the United States at their convenience and whim with no effort to maintain long-term ties in and with the United States.

Permanent residents who anticipate being outside of the United States for a continuous period longer than six months, and certainly longer than one year, should consider applying for a “reentry permit.” A reentry permit is an advanced approval from the U.S. government that allows permanent residents to stay outside of the United States for a continuous period of up to two years at a time. Unfortunately, obtaining a reentry permit in advance does not guarantee the U.S. government will admit an individual as a permanent resident. Therefore, permanent residents with reentry permits should be prepared to provide evidence that they have made the United States their forever home.

Maintaining one’s permanent resident status long-term requires planning and effort, and often expense and legal advice. Permanent residents should therefore consult with their immigration attorney, or if they do not have one, with the Immigration Practice at Reinhart well in advance of any travel or activities that may cause their permanent resident status to become not-so-permanent.

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