



## MEMORANDUM

**TO:** Reentry Permit Applicant  
**FROM:** Seyfarth Shaw Business Immigration Group  
**RE:** Retaining Permanent Residence During Contemplated Absence from United States

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### PURPOSE

This Memorandum addresses the risk that a prolonged absence from the United States could cause, and the impact on permanent residence status. This Memorandum recommends steps that may be taken to minimize that risk.

### GENERAL

Generally, a lawful permanent resident (“LPR”) must intend to retain an unrelinquished permanent residence in the United States at all times. A person can lose status as a permanent resident if the United States Citizenship and Immigration Services (“USCIS”) concludes, based upon a variety of factors, that the person did not maintain an intention to reside permanently in the United States. One factor that may lead the USCIS to conclude that permanent residence has been abandoned is an extended absence from the United States.

### RETURN FROM TEMPORARY ABSENCE ABROAD

U.S. immigration law allows a “returning resident” to use the Form I-551 (the “green card”) as a travel document to enter the United States if that person is returning from a temporary absence abroad. A temporary absence is considered to be one of less than one year. Thus, a permanent resident who is returning to the United States after spending less than one year abroad is generally entitled to use the green card as a reentry document, although this rule does not necessarily mean that a person who enters the United States once per year for short trips has succeeded in maintaining permanent residence status. An annual visit to the United States is not a guarantee that a person has maintained lawful permanent residence status; it only means that the person is entitled to present the green card as an entry document. The USCIS may still question whether lawful permanent residence has been maintained and may refuse entry if it concludes that permanent residence has not been maintained.

### INTENT TO RETAIN RESIDENCE IN U.S.

The issue of abandonment of permanent residence revolves around a determination of intent and is not controlled merely by looking at the actual dwelling place of the person in question (although the actual dwelling place is one factor to consider).

Many objective factors are assessed in determining intent. Factors that are assessed include:

- location of family ties;
- location of assets and property;
- place of employment;
- business and social ties;
- payment of taxes;
- purpose and duration of the trip abroad.

In general, where the purpose of the trip abroad is definite and may be accomplished within a given timeframe, it is possible to retain permanent residence even where the trip has been prolonged due to unforeseen or unanticipated events. Conversely and as a general rule, a trip abroad for an indefinite time where U.S. properties and assets are sold, a home is purchased abroad, and employment with a foreign employer is undertaken may result in a finding of abandonment of permanent residence.

## **REENTRY PERMIT**

If the permanent resident travels abroad for a specific, definite purpose, and contemplates returning to the United States within a definite, pre-set time frame, there are steps that can be taken to maximize the likelihood that permanent residence will not be deemed to have been abandoned. One option is to apply for a **reentry permit** prior to departure from the United States. A reentry permit constitutes evidence of the intent to retain permanent residence in the United States. The reentry permit is obtained by filing an Application for Issuance of Reentry Permit with the United States Citizenship and Immigration Services (Form I\_131). Note that the applicant must be physically in the United States at the time of filing the reentry permit application, and may also be required to attend a biometrics appointment in the U.S. that will be scheduled by USCIS after the application has been filed. Biometrics appointments are generally waived for applicants under 14 years of age. It is strongly recommended that reentry permit applicants remain in the U.S. from the time the application is filed until after biometrics have been completed. In certain cases, USCIS is able to utilize previously collected biometrics for the processing of the application, and if so, will issue a notice indicating so.

Although the reentry permit constitutes relatively strong evidence of maintenance of lawful permanent residence, as a practical matter, the USCIS remains free to re-examine questions relating to maintenance of status. Thus, while possession of the reentry permit constitutes prima facie evidence of intent to retain permanent residence, it is not conclusive.

## **SPECIAL IMMIGRANT VISA**

In the event that the reentry permit expires (i.e., the trip abroad has lasted more than two years), there is another travel document available—the special immigrant visa. The special immigrant visa is obtained by filing the Form OF230 with an American embassy or consulate. By filing this form and presenting evidence of an initial and continuing intent to retain permanent residence in the United States, reentry as an immigrant may be possible.

## **FACTORS INDICATING ABANDONMENT**

As above explained, the three types of reentry documents—the green card, the reentry permit, and the special immigrant visa—do not guarantee a right to re-enter the United States. Immigration authorities will always seek to determine whether at any point permanent residence in the United States has been abandoned. In addition to residents who have been outside the U.S. for an extended length of time, certain returning residents fit a profile determined by USCIS to be indicative of persons who have abandoned permanent residence. USCIS officers may be suspicious where a person seeks to enter as an immigrant (permanent resident) and meets one or more of the following:

- arrives via charter airline where nearly all passengers are nonimmigrants;
- returns to U.S. with spouse or children on visitor's visa;
- arrives at port of entry in U.S. that is a resort gateway;
- has round trip ticket for short duration;
- lists address in U.S. on I-94 card as hotel, "in care of," or similar address.

On the contrary, the following type of evidence favors a finding that permanent residence has been maintained:

- having filed U.S. income tax returns;
- owning property in U.S. (especially if the property was the principal residence for a time);
- has valid U.S. driver license issued within last year that shows U.S. address the same as address on I-94 departure card.

The above listing is not exhaustive but should give you an idea of the type and quality of contacts that need to be maintained in order to prevail if permanent residence status is challenged.

## **IMPACT REGARDING AN APPLICATION FOR CITIZENSHIP**

As a separate matter, an extended absence from the United States could adversely affect a permanent resident seeking to apply for U.S. citizenship. Generally, lawful permanent residents may file a citizenship application once they have lived continuously in the U.S. as permanent residents for five years. Significant absences from the United States could interrupt this required continuity of residence, resulting in the permanent resident's ineligibility for citizenship until such time as the required period of residency has been re-established. It may be possible to preserve any continuous residence time already spent as a permanent residence in the United States so that the required period of continuous residence is not interrupted by the international travel. In order to file the required application (called the Form N-470 Application to Preserve Continuity of Residence for Naturalization Purposes), the permanent resident must have been admitted as a permanent resident and must have been physically present in the United States for at least one full continuous year with no international travel during that one year period.