

Decision to be or not to be a U.S. citizen or permanent resident can't be made lightly

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January 26, 2018 | **IMMIGRATION**

The decision to become or remain a U.S. citizen or lawful permanent resident (green card holder) is a strategic one that can be quite complex, depending on the client's circumstances. There are both benefits and consequences to obtaining or relinquishing long-term status in the United States.

Lawful permanent residence comes with the privilege of residing in the U.S., but also the responsibility of residing in the U.S. While some green card holders make their way to U.S. citizenship, others maintain lawful permanent resident status without change, while still others abandon the status altogether.

Abandonment of lawful permanent residence usually occurs when the green card holder decides to move out of the United States. The requirement that a lawful permanent resident maintain a primary place of residence in the U.S. is taken seriously by the government, and is a question of fact by U.S. Customs and Border Protection (CBP) officers. All factors can be weighed in determining whether this expectation is being met, including time out of the U.S., location of family, location of employment, and even the minutiae of where one keeps a library card or a grocery store card.

If a determination is made by a CBP officer that a green card holder is not maintaining a primary place of primary residence in the U.S., but the individual will not voluntarily give up lawful permanent resident status, an immigration judge may be asked to weigh the evidence and decide if the status has, in fact, been abandoned. This requires the judge to determine the intent of the individual upon leaving the U.S., and actions, activities and factors that occur subsequent to departure.

Generally, CBP officers provide a one-year grace period after departure in which the individual can settle any affairs and make a firm decision. After that one year, the person may be faced with a decision to either formally abandon the status, or maintain it by either moving to the U.S. again or obtaining a re-entry permit. It is important that a green card holder who plans to abandon status understand that he or she is giving up the ability to sponsor family members for lawful permanent residence into the future.

While becoming a U.S. citizen (where possible) removes the returning residency risks inherent in living outside the country, it is not the only option available to lawful permanent residents planning to move abroad, such as those who have an international work assignment or need to relocate temporarily for family reasons. One can also file an application to obtain a re-entry permit before leaving the U.S. These documents permit foreign-resident green card holders to maintain lawful permanent residence and are granted for a period of up to two years at a time.

There is no statutory or regulatory limit on the number of re-entry permits an individual can obtain, or the number of years these documents can assist with maintenance of U.S. status. While initial permits are generally granted in two-year increments, be aware that the longer a lawful permanent resident resides outside the United States, the more likely it is that the re-entry permit will only be granted for a single year at a time. This may be how the U.S. government encourages green card holders to make up their mind.

Counsel need to be aware of the risks and rewards when advising clients on whether to obtain maintain or give up their status as either a citizen or lawful permanent resident.

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