

Financial implications a consideration when deciding U.S. status

By [Elizabeth M. Klarin](#)

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Last week's article on whether to become or remain a U.S. citizen or lawful permanent resident (green card holder) discussed how to avoid pitfalls in making such an important decision and noted that counsel need to be aware of the risks and rewards when advising clients. This article will examine the tax implications and other considerations.

Cost-benefit analysis

Green card holders are required to file U.S. resident federal income tax returns, even when residing outside the United States. If they fail to do so because they believe themselves to no longer be residents of the U.S., they will have to attest to this on any re-entry permit application form.

Confessing to failure to pay American taxes may get in the way of obtaining a re-entry permit, and it could also negatively affect the applicant's chances of being granted U.S. citizenship in the future.

Some lawful permanent residents may decide to abandon their status early due to tax reasons, such as in cases where an individual will be gaining income in the future that is treated more favourably in a home country. However, long-term permanent residents should watch out for an exit tax, which can apply upon abandonment and have a substantial impact on their finances.

In some countries around the globe, obtaining U.S. citizenship also carries a price. For example, certain places do not permit their citizens to hold dual citizenship — so obtaining U.S. citizenship would require them to give up their other citizenship, resulting in potential visa requirements for future visits to a country of birth.

Likewise, in certain countries, obtaining U.S. citizenship prevents continued ownership of real property. These considerations and more go into the complex cost-benefit analysis of obtaining, maintaining or giving up any long-term U.S. status.

Other considerations in filing for U.S. citizenship

Many green card holders become American citizens through the naturalization process, for many and varied reasons. It could be they want all members of a family to have the same permanent status in the U.S., preventing one from being excluded or removed from the country. Or it could be to show allegiance to a new home.

U.S. citizenship is a requirement for some jobs. Others gain the status to qualify for additional benefits, such as

financial aid and student loans. Another reason could be to lower a tax burden that might otherwise arise based on gifts between spouses. But when is it prudent to hold off on applying for U.S. citizenship?

Some individuals may choose not to file an application for U.S. citizenship due to an inability to meet the minimum requirements for the new status. In order to file successfully, applicants must have spent half of a defined period physically present in the U.S. They must also have maintained lawful permanent residence for a defined period. These time frames vary depending on how the green card was obtained, such as whether the applicant has been married to a U.S. citizen for the past three years.

Additionally, the applicant must demonstrate good moral character. While this requirement is usually defeated by criminal activity, the consequences of revealing criminal activity can extend beyond denial of a citizenship application. For instance, the adjudicating officer could both deny the application for naturalization and revoke the individual's lawful permanent resident status based on the applicant's criminal past (which might otherwise have remained out of the spotlight of U.S. Citizenship and Immigration Services).

Some non-criminal behaviour can have an impact on eligibility for U.S. naturalization, such as drinking and driving, which is an infraction or violation — not a crime — in some jurisdictions.

Lawful permanent residents should only decide to maintain status, abandon their green cards or apply for U.S. citizenship with the knowledge of how this can affect them. Understanding the implications of these actions before they are taken could save tax or tuition dollars, ensure continued ability to live in a desired location and prevent legal proceedings to try to undo the unwelcome effects of acting without proper advisement.

Related Team



Elizabeth M. Klarin
Partner



Eileen M. Martin
Partner | Team Co-
Leader - Immigration
| Team Leader -
Canada-U.S. Cross
Border

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