

Risks of moving or residing outside U.S. with a green card

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With Lawful Permanent Resident (LPR) status (or green card status) in the U.S. comes the privilege of residing in the U.S. What may be less obvious is the responsibility to live in the U.S. that also accompanies it. When one leaves, there is a process to undertake to abandon status, or maintain it.

The green card is a U.S. government document. The U.S. government can therefore advise LPRs what they are to do with the card. When in the U.S., LPRs are required to keep the card with them at all times. Prosecutions for not doing so are few, if they even exist at all, but this is a legal requirement. Further, when LPRs move out of the U.S., they are to turn in the card and officially abandon their LPR status, with exceptions. Failure to complete the process can also have U.S. tax implications.

When an LPR officially abandons his status, he signs an I-407 at a U.S. Customs and Border Protection (CBP) office at a port of entry, or through a consular process with an embassy or consulate. This process frequently is initiated by the LPR, but not always.

When an LPR has moved out of the U.S. or is determined by a CBP officer to have never taken up residence, he may be asked — in conjunction with an application for admission — to formally register abandonment of LPR status. If the he objects to signing that he or she willingly and voluntarily has abandoned the status, the CBP officer may issue a Notice to Appear, requiring the him to make the case for maintenance of status before an administrative immigration judge.

It is important to note that only two people can determine that an LPR has abandoned their status. The LPR can abandon status by signing the I-407 and formally abandoning status. An administrative immigration judge is the other person who can order LPR status abandoned. U.S. CBP officers often threaten to “take away the green card,” but they lack that authority.

If an LPR is moving outside of the U.S. temporarily, or is unsure whether he or she may plan to move back, a document called a re-entry permit can preserve status while the green card holder lives outside the U.S. After obtaining the green card and not residing in the U.S., or moving away from the U.S., most U.S. CBP officers at ports of entry will extend a one-year grace period, after which they will be looking for a re-entry permit as a condition of entry to the U.S.

Re-entry permits are issued for up to two years at a time and the applicant must be physically in the U.S. when filing. Although there is no maximum number of years and no maximum number of reentry permits for an LPR, we find that initial documents are usually issued for two years. The next one might also be for two years.

An LPR can reasonably expect the next re-entry permit to be valid for one year, and the same with subsequent documents. It would appear the U.S. government would prefer to have LPRs make up their minds after a while and return to the U.S. or abandon their status.

With planning, an LPR can maintain U.S. resident status while residing outside the U.S. — either to ensure the ability to return as an LPR or to have time to make future plans. Failing to plan may result in disappointment, or perhaps even expensive, drawn-out administrative court proceedings.

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