

The Impact of International Travel: Maintaining LPR Status and Preserving Residency for Naturalization

Maintaining LPR Status

Once Legal Permanent Resident (LPR) status is obtained, it is important to take appropriate steps so as not to abandon such status. Each LPR **must** file U.S. tax returns as a resident in order to maintain their status. Failure to do so could result in loss of LPR status. In the event that an LPR must leave the U.S. for an extended period of time, other steps can also be taken to demonstrate permanent resident status is being maintained:

1. maintenance of U.S. address
2. written statement from employer documenting employment assignment abroad
3. maintaining U.S. bank account and credit card accounts
4. continuing to renew US driver's license
5. ownership of property

If an LPR takes a temporary trip outside of the U.S. for more than one year, the permanent residency status may be deemed abandoned, and the LPR may be required to present additional documentation in order to re-enter the U.S.. Note, however, there are times that a trip for more than one year would be deemed not to abandon LPR status, and a trip for less than one year would be deemed to abandon LPR status, depending on the factors of the case and the intent of the LPR. A temporary visit abroad usually involves a short, fixed period or will terminate upon the occurrence of a particular event (e.g. end of assignment, graduation from school, taking care of ill relative, etc); however, at all times the LPR must maintain a continuous uninterrupted intention to return to the U.S. Ultimately LPR status is never lost until revoked in court by a judge.

If an LPR needs to leave the U.S. for an extended period of time, he should file a Re-entry Permit, which would permit an absence for up to two years if granted by the USCIS. If additional time is needed the LPR can return before the end of the two year period, and file for a new Re-entry Permit. The LPR must be present in the U.S. to file the application and to obtain biometrics, but would *not* have to wait for approval of the Re-entry permit before leaving. While a Re-entry Permit does not guarantee an LPR's admission to the U.S., it does indicate to border officers that the LPR intends to maintain status despite a lengthy absence.

It is important to keep in mind that merely returning to the U.S. once a year for a brief amount of time does not indicate a person's intent to remain an LPR. Such intent must be demonstrated in other ways, such as the steps suggested above.

Preserving Residency for Naturalization

In addition to maintaining permanent residency status and abandonment thereof, LPR's must also be concerned with preserving residency requirements for naturalization, if the LPR intends to acquire U.S. citizenship. These issues can often be confused due to the similarity of the concepts they involve; however, they should be considered independently.

Along with a number of other requirements, a permanent resident must meet the residency and physical presence requirements to become a naturalized U.S. citizen. The length of the **residency requirement** is based on the status of the lawful permanent residence and the method by which LPR status was obtained. An LPR who is the spouse of a U.S. citizen must be

a resident continuously for **three** years after acquiring LPR status. All other LPR's must be a resident continuously for **five** years. All LPR's must also be physically present in the U.S. for at least half of the required residency period (*i.e.* 1 ½ years for spouse of U.S. citizen and 2 ½ years for all other lawful permanent residents).

In order to meet the 3-year/5-year residency requirement, the following rules apply (Note: these rules depend solely on the length of the absence, and issuance of a Re-entry Permit has no bearing on the result):

1. an absence of **less than six months** does not break the LPR's continuous residency in the U.S. for naturalization purposes
2. an absence of **greater than six months and less than one year** creates a presumption that the LPR's continuous residency was broken unless the alien can give a reasonable explanation of the absence (such as an overseas employment assignment)
3. an absence of **over one year** automatically breaks the LPR's continuous residency, unless the LPR has taken steps to preserve residency.

A break in the continuity of the LPR's residence will require the LPR to start the accumulation process again upon his or her return to the U.S.

If an LPR is required to fulfill an employment position abroad for a lengthy amount of time, the way to preserve the residency requirement for naturalization purposes is to file an Application to Preserve Residence, at least prior to being absent from the U.S. for one year. The LPR does not need to be in the U.S. at the time of filing the application, but there are certain conditions that must be fulfilled in order to qualify, including being physically present in the U.S. for one full year after obtaining LPR status.

If the LPR is granted extended absence benefits, the LPR will be able to satisfy the 3-year/5-year continuous residence requirement for naturalization even while outside of the U.S. However, the LPR must still meet the actual physical presence requirement of being physical present in the U.S. for ½ the required period (2 ½ / 1 ½). The only exception to the physical present requirement is for the LPR who is employed abroad under contract with the U.S. government, where the LPR's time spent abroad is counted towards the physical presence requirement.

Alternatively, if the LPR is ineligible for the Application to Preserve Residence, he or she would not break the chain of continuous residency by returning to the U.S. every six months (Note, however, that it could impact maintenance of LPR status if the immigration officials believe you have the intent to remain abroad).

If you have questions about extended international travel, please feel free to contact our offices to discuss your eligibility for either a Re-entry Permit or an Application to Preserve Residence.