



**UNINTENTIONAL ABANDONMENT OF LAWFUL PERMANENT RESIDENT STATUS:  
CAUSES, CONSEQUENCES AND PREVENTION  
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Becoming a Lawful Permanent Resident (LPR) of the United States is often a long and difficult process for foreign nationals. Obtaining LPR status leads to a multitude of benefits, including the freedom to live and work anywhere in the U.S., as well as qualify for social welfare programs and government financial aid for higher education. It is also one step closer to becoming eligible for U.S. citizenship. Permanent residence may be obtained through a U.S. citizen or LPR family member, employment, investment, asylum or refugee status, and the diversity lottery. Regardless of how the person became an LPR, he must have the intent to reside permanently in the United States and take precautionary steps to prevent the unintentional abandonment of his LPR status.

The question of abandonment depends on the person's intent rather than the length of time he spent abroad. Nonetheless, the longer one spends outside the U.S., the harder it becomes to show that he intended to return to the U.S. and live here permanently.

**Absences of More Than Six Months**

Most permanent residents are aware that they could lose their status and be ordered removed from the United States if they commit certain crimes. But many are unaware that they could lose their status by simply being absent from the United States for an extended period, particularly for more than six months or 180 days. They often learn about the abandonment issue only when it is too late to take preventive steps. For example, they might depart for their home country to care for an ill, elderly relative and not think twice about maintaining their residence. Upon their return to the U.S., following a long absence overseas, the U.S. customs officer may refuse to admit them as an LPR because they have being gone for so long and cannot show strong ties to the U.S.

Even though they have never committed a crime and were never placed in removal proceedings, permanent residents have to "apply for admission" at the U.S. port of entry upon their return from overseas. An absence of more than six months raises a presumption that the person abandoned his LPR status. The U.S. customs officer may require the person to prove he has not abandoned his LPR status by showing fixed ties to this country (for example, filing of income

tax returns, family members in the U.S., property ownership, bank accounts, and business affiliations.)

### **Absences of One Year or More**

Permanent residents who are absent from the United States for one year or more often find it the hardest to being re-admitted. Besides the issue of abandonment, the green card is not enough to gain re-entry to the U.S because it becomes technically invalid following an absence of one year or more. The returning resident must have a re-entry permit and apply for the permit before he leaves the United States. Otherwise, he may be considered to have abandoned his LPR status when he seeks admission. A re-entry permit helps to show that he did not intend to abandon LPR status, and allows him to apply for admission to the U.S. after traveling abroad for up to two years without having to obtain a returning resident visa.

### **Consequences of Unintentional Abandonment**

If the person does not convince the customs officer that he maintained his status, he may be detained in the custody of U.S. Immigration & Customs Enforcement (ICE) or released conditionally, placed in removal proceedings, and referred to the Immigration Court to decide whether he is admissible to the United States and whether he abandoned his status. If the Immigration Court finds that he abandoned his status, and he wants to stay in the U.S., he will need to file an application for defense against removal or re-file an application for permanent residence, assuming he is eligible.

In other cases, the customs officer may simply confiscate the LPR's green card at the port of entry, deny him entry, and force him to return to his home country or last country of departure. The customs officer may also give the person a Form I-407, Abandonment of Permanent Residence Status, to sign (sometimes in exchange for being admitted to the United States as a temporary visitor).

### **Steps To Preventing Unintentional Abandonment of LPR Status**

Proving that the LPR maintained his status after he lived outside the United States for most of the year is a very challenging task. The person not only runs the risk of losing his LPR status but also of being forced to depart the United States. Abandonment of LPR status will also affect immigrant petitions for beneficiaries that the LPR might have pending before USCIS. For example, if it is decided that an LPR abandoned his status while his immigrant relative petition for a son or daughter is still pending with USCIS, that petition becomes invalid and the son or daughter will not be granted permanent residence.

There are steps that permanent residents should take to maintain their status instead of being deemed to abandon their status. They include the following:

## **1. Avoid Prolonged Absences from the United States and Taking Residence in Another Country**

LPR status is granted to foreign nationals who intend to make the U.S. their permanent home. Prolonged absences from the U.S. for any reason other than a temporary purpose could result in the loss of this status. The Board of Immigration Appeals (BIA) has set legal precedents regarding the abandonment of LPR status. The BIA defined “permanent” to mean “a relationship of continuing or lasting nature, as distinguished from temporary.” The BIA defined “residence” to mean “the place of general abode, the place of general abode of a person means his principle, actual dwelling place in fact, without regard to intent.” Finally, the BIA stated that a person returning to the U.S. as an LPR must be returning “to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad.”

In one BIA case, *Matter of Kane*, a citizen of Jamaica lived in her native country for 11 months and came back to the U.S. for one month each year in an effort to maintain her LPR status. The BIA found that her actual place of residence was Jamaica, and she was no longer entitled to LPR status in the U.S. As this case illustrates, many LPRs mistakenly believe that they only need to return to the U.S. at least once per year in order to maintain their LPR status.

## **2. Continue to Maintain Ties to The U.S.**

Family connections, business ties, membership in organizations, ownership of property, employment and tax filings in the U.S. help to show that the person intends to live permanently in the U.S. and did not abandon his LPR status despite a prolonged absence. The person must also show that the purpose of the trip abroad was temporary and fixed and that he intended to return to the U.S. as an actual home or place of employment. Family ties, property ownership and business affiliations in the foreign country, on the other hand, raise red flags. Failing to file tax returns or filing as a nonresident in the U.S. are also negative factors.

## **3. Refrain from Signing a Form I-407**

A signed Form I-407 serves as evidence that the person affirmatively abandoned his residence. A person who no longer wishes to keep his LPR status can always sign a Form I-407 and submit it with his green card to the appropriate U.S. Embassy or U.S. Citizenship & Immigration Services (USCIS). But when the person does not wish to abandon his status, he should refrain from submitting a signed I-407, even if he is pressured to do so at the U.S. port of entry. This would make it much harder to prove that he maintained or intended to maintain his status. When the person can be the beneficiary of an immediate relative petition, however, he may choose to sign the I-407 and be waived in as a visitor rather than a returning resident. Then, when he is more able to reside in the United States, a new immigrant petition can be filed for him.

#### **4. Apply for a Re-Entry Permit**

A re-entry permit does not automatically preserve LPR status or guarantee re-entry into the U.S. following a prolonged absence. Nonetheless, a re-entry permit helps to show that the LPR intended to return to the U.S. The re-entry permit also serves as a valid entry document after absences of more than one year.

#### **Conclusion**

When the person presents a colorable claim to returning resident status, the U.S. government has the burden to show by clear and convincing evidence that he abandoned his LPR status and is thus removable from the U.S. If the government meets this burden, the person then has to prove otherwise.

While it is important to know the benefits of LPR status, it is more critical to understand how to maintain it. Because each case is unique, all permanent residents should consult with an experienced immigration attorney before leaving the U.S. for an extended period, regardless of the purpose of the trip. Getting sound legal advice and taking precautionary steps could mean the difference between preserving LPR status and losing this coveted status, which many struggle to obtain.