

SUMMARY

Maintaining Lawful Permanent Resident Status

Under U.S. Immigration law, a U.S. permanent resident alien must continually maintain his or her intent to remain a permanent resident of the United States. If an alien is out of the United States for extended periods of time, the Department of Homeland Security (“*DHS*”) will look to certain objective factors to determine whether that alien has maintained the required intent. We hereinbelow outline these factors and, in the footnotes, suggest actions that one may take to maintain his or her U.S. permanent residency:

- a. The length of the alien's absence from the United States¹;
- b. The purpose of the alien's departure from the United States;
- c. The existence of facts indicating a fixed termination date for the stay outside the U.S.;
- d. The continued filing of U.S. and state tax returns as a resident of the U.S. claiming all worldwide income on such returns²;
- e. The maintenance of a U.S. address³;
- f. The maintenance of other ties with the U.S., such as property ownership, bank accounts, credit cards and a regularly renewed driver's license⁴;
- g. The location of the alien's close family members; and

¹ As you are aware, merely returning to the U.S. once a year for several weeks is not sufficient for purposes of maintaining one's lawful permanent residency; the alien needs to maintain the ties described in this section to maintain his or her U.S. permanent residency.

² Please note that a permanent resident must continue to file U.S. tax returns as a **resident of the United States**. As a result of international tax treaties and/or foreign tax credits, the alien may pay minimal or no U.S. taxes, but he or she must nonetheless file a U.S. tax return as a U.S. resident and claim his or her worldwide income (even if the alien is able to exempt most of all of this income from U.S. taxation).

³ If an alien is transferred abroad by his or her employer and the alien owns property in the U.S., he or she should consider renting it rather than selling it. Whether or not the alien owns property in the U.S., he or she should maintain an address in the U.S. even if it is an address with a relative or close friend.

⁴ If the alien is assigned by his or her employer to a position abroad for a relatively short period of time, the alien should request that his or her employer continue to pay the alien in U.S. dollars and deposit the same into his or her U.S. bank account. Whether the assignment abroad is for a short or long term, the alien should maintain his or her U.S. bank accounts and credit accounts and continue to maintain his or her Hawaii driver's license (and any other Hawaii or U.S. licenses the alien holds).

- h. If the alien is transferred by his or her employer to a position abroad, the nature of the alien's employment (e.g., U.S. vs. foreign employer, permanent vs. temporary employment abroad, open-ended vs. fixed-term employment contract)⁵.

Please be aware that merely returning to the United States once a year for a few days or even very often does not “automatically revalidate” lawful permanent residency status where the lawful permanent resident resides abroad. Using the factors above, DHS can independently determine that lawful permanent residency status has been abandoned.

Absences of More than One (1) Year

As you may know, an alien may use his or her Permanent Resident Card (i.e. the "green card") as documentation to reenter the United States after a temporary trip outside the United States if the alien is seeking readmission into the United States within one (1) year of his or her last departure.

If the alien knows in advance of departing from the United States that he or she will not be able to return within one (1) year, the alien may apply to the INS while still in the U.S. for a "reentry permit." A reentry permit may be used as documentation to reenter the U.S. for a period of up to two (2) years from the date of the alien's departure from the U.S. (and may be used on multiple occasions during that two-year period). However, the alien should be aware that once he or she receives a reentry permit, each time thereafter that the alien applies for another such permit the alien can expect closer scrutiny of the issue of whether he or she has maintained his or her U.S. permanent residency.

If the alien does not know in advance that he or she will not be able to return to the U.S. within one (1) year or if the alien acquires a reentry permit but does not return to the U.S. within two (2) years from his or her departure from the U.S., the alien must obtain a "special immigrant visa" from the U.S. Consulate (in the alien's home country) to be readmitted into the U.S. If the alien applies for a special immigrant visa, he or she will have to prove to the U.S. Consulate that he or she had no intent to abandon and has not abandoned his or her permanent residence in the U.S. and that the alien intends to and has maintained such residence as evidenced by the factors described above.

End of Summary

⁵ If the alien's employment abroad is for an indefinite period of time, the alien must be especially careful to maintain as many ties to the U.S. as possible. If the employment abroad is based on a temporary assignment (or for a known time period), the alien should obtain an employment contract or statement from his or her employer specifying the terms and length of the employment and, if applicable, stating that the employment abroad will lead to a transfer back to the U.S. As you may have inferred, the DHS will suspect that an alien who is assigned to a foreign employer outside the U.S. for an indefinite period of time has abandoned his U.S. permanent residency.