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Subject: Avoiding Abandonment of Lawful Permanent Resident Status

Title: *How to Keep Google From Being the First Step to Losing Your Green Card*

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In keeping with the ebb and flow of the global economy, come the issues associated with not only the immigration of people to the United States, but their emigration from the United States for lengthy, yet ostensibly temporary, periods of time. Such cross-border relocations occurs with surprising regularity. Employers transfer personnel abroad for stints on the order of years. Or, sometimes foreign nationals pursue jobs overseas with the intention - or perhaps merely the hope - of returning to the U.S. at a later time. Such absences from the U.S. also can be driven by family obligations, educational or career pursuits, or even U.S. immigration law dictates.

This article focuses on pitfalls to avoid, and considerations to be made when globally mobile foreign nationals holding Lawful Permanent Resident (“LPR” or “green card”) status wish to maintain the right to return to the U.S. to reside permanently.

In delving into this topic, and by way of some background, it is instructive to accept that Lawful Permanent Resident status in this country is not necessarily forever. Indeed, a foreign national may lose LPR status a number of different ways. Among the more interesting and newsy ones are: committing certain crimes; funding or otherwise abetting organizations who wish to bring harm to the U.S. and its people - perhaps even unwittingly; and having engaged in certain fraudulent behaviors to get a green card in the first place (*e.g.*, identity and marriage fraud) which are later ferreted out by our vigilant immigration system.

But the more insidious way for an LPR to lose his or her green card is by an operation of immigration law known as “abandonment.” The general rule says abandonment of

LPR status may occur where a green card holder has been absent from the United States for a period exceeding one year. A finding of abandonment may also arise from an immigration official having reason to believe the green card holder simply does not live in the U.S. anymore. For example, failing to file one's U.S. tax returns as a resident of the United States can lead to loss of a green card by a presumption of abandonment, albeit a rebuttable presumption. Abandonment may also come about deliberately by the LPR voluntarily and knowingly giving up his or her green card; this typically comes about when the foreign national wishes to never reside in the U.S. again, wishes to avoid tax consequences, or even wishes to avoid our military conscription registry requirements.

Though interesting in and of themselves, green cards holders motivated by tax avoidance, or those who do not wish register with the Selective Service, will be a subject for another day. This article will focus on typical abandonment problems stemming from LPRs who have been absent from the U.S. for the lion's share of the last one or more years, and are now seeking readmission as LPRs.

Unfortunately, the convenience of the Internet has - for many - become the low hanging fruit of legal advice. Though true that loss of one's green card may be triggered by absence from the U.S. of a year or more, this has morphed online into a more problematic form. Go to your search engine of choice and pop in this query: *"how long can you stay out of the country with a green card?"* Among the answers the Information Superhighway will provide are usually either one year, or sometimes six months. This quasi-accurate factoid is then further bandied about in chat rooms, online forums, and even websites of practicing immigration lawyers. At the end of it all, the answer many take away becomes in essence: *as long as one does not remain abroad for over a year, LPR status may be held indefinitely.* But this is not only bad advice, it has become an Internet myth. Things are not always so simple. But nevertheless, we still see individuals and entire families placing their faith in the Great and Powerful Google; so often to their detriment. They make changes to their career paths, and make decisions about where they will live in the world - and for how long - all based upon their reliance of Internet search results. For those search results including caveats such as "it depends" or "you should consult an immigration attorney," many do not take heed. For them, actual facts matter not. And we immigration lawyers see it again and again - the myth perpetrated by Google is alive and well.

U.S. immigration regulations are fairly clear that a foreign national with a green card who has been abroad for more than one year, has abandoned LPR status. But this does not also mean absences from the U.S. of less than one year do not result in abandonment of LPR status. One may be outside the U.S. for a period of less than a year and still lose the green card. The test is whether the LPR intended to be outside the U.S. temporarily. The immigration service determines the subjective intent behind a LPR's departure from the U.S. by examining objective factors. These include: the purpose of the departure from the U.S.; whether the extent of time spent abroad is easily identifiable by a fixed termination event; documentary evidence of an objective intention to return to one's actual home and/or job in the United States; an examination of ties to family remaining in the U.S.; and other aspects such as memberships in U.S. organizations and clubs, the existence of property mortgages and leases in the U.S., business affiliations in the United States and income tax returns.

These case-specific factors, when one considers them, do make sense. When one does not consider them, as Google cannot, disaster may ensue. The United States does not permit just anyone to hold Lawful Permanent Resident status; including those who do not, in fact, permanently reside in the United States. Yet, all too often a green card holder moves family and household abroad, and jumps on a plane once a year to stay with a friend in the U.S. for the weekend, in a misguided effort to maintain his LPR status. While it is sometimes possible to successfully defend a foreign national's green card when faced with a *prime facie* finding of abandonment, as with many things an ounce of prevention is worth a pound of cure. A green card holder should approach the issue of keeping his LPR status during a prolonged absence from the U.S. as follows.

- *Apply for a Reentry Permit* - A Reentry Permit is a travel document issued to green card holders who intend to remain abroad for more than one year. They are valid for up to two years, permitting an absence from the U.S. for the full extent of validity. Though not renewable, one may apply for subsequent Reentry Permits. A second application (*i.e.*, after two years overseas) is typically approved. Third applications are less likely to be approved, but are still sometimes granted. One must be physically present in the U.S. when filing for a Reentry Permit, and remain here through the biometrics phase of the application process; usually one to three weeks.
- *Do Not File Tax Returns as a Non-Resident* - The immigration service has held that filing U.S. tax returns as a non-resident is cause to presume abandonment of LPR status. Though the presumption is rebuttable, the time, energy and expense of defending abandonment of LPR status on any ground can be substantial, and successful rebuttals are not necessarily slam dunk victories. Furthermore, green card holders should always be cautioned to consult competent international tax professionals with respect to their tax liability both in the U.S. and abroad.
- *Keep Documentary Evidence Relating to the Purpose of the Sojourn Abroad* - If an LPR plans depart the U.S. temporarily, he or she should gather documentary evidence of the purpose and duration of the trip at the onset; not months or years later when a concern arises. For example, if the reason for departing the U.S. is to assist in the care of an ill relative, confirming letters from physicians can be helpful evidence. If the travel is due to a work assignment abroad, a letter from the employer indicating the nature and length of the assignment is appropriate. This evidence should be retained, and ideally filed together with the LPR's Reentry Permit application to create a record before even departing the U.S.
- *Maintain Strong Ties to the United States to Show Continuity of Residence* - Whenever possible, the green card holder should maintain strong ties to the U.S. The purpose for this is twofold. First, such evidence may be used to rebut a possible future presumption of abandonment or residence. But also, these ties are instrumental in avoiding a finding that "continuity of residence" has been broken - a requirement in pursuing naturalization as a citizen of the United States. Examples of such ties include: maintaining employment in the U.S.; the existence of immediate family members in the U.S.; keeping unrelinquished

access to one's primary domicile in the U.S.; and not accepting employment overseas. Though the meaning of "residence" in the citizenship process is somewhat different than it is in the LPR abandonment context, maintaining these strong ties builds stronger equities as a whole, and should be employed to the best extent possible whenever an LPR is planning to reside outside the U.S.

Notwithstanding these convenient bullet-points, the over-arching moral to this article is that maintenance of LPR status is not as simple as some may say. A case analysis for green card retention by a competent immigration lawyer *before* the foreign national moves overseas is recommended. It is also generally an inexpensive exercise. It should be the first step the LPR takes before selling property, quitting a job and buying airline tickets - especially if naturalization as a U.S. citizen is a likely future consideration. If a Reentry Permit is in order (as it almost always is), the cost to obtain one is nominal, particularly when compared to the costs associated with international relocation.

In this day and age when many must wait a decade or more to obtain a green card, there is no substitute for a few hundred bucks well spent on good, case-specific legal advice from a competent immigration lawyer. So, if you are a Lawful Permanent Resident of the United States planning to live abroad for a while, if you must use Google, use it to find a good immigration lawyer.