

Using a Reentry Permit to Avoid LPR Status Issues

The COVID-19 global pandemic has created significant travel complexities for LPRs, including reduced flights, a range of travel and border restrictions, and otherwise upended the travel regime that existed before COVID-19 for the time being.

As such, an LPR should consider applying for a Reentry Permit (Form I-327) before departing the U.S. if the LPR needs to undertake temporary travel abroad to a more remote part of the world, a longer travel duration of over six months and up to two years, the need for more than half of a two year period spent abroad, or if an immigration officer (generally CBP) has warned the LPR of a risk of abandonment.

The Reentry Permit may facilitate return travel to the U.S. within its validity period as affirmative evidence the LPR did not intend to abandon LPR status based upon solely travel outside of the U.S. for up to two years. In these cases, the LPR, if outside the U.S. for more than one year, does not have to obtain a returning resident visa (SB-1). Note that a Reentry Permit can also be used as a travel document in place of a passport for an LPR that does not want to obtain or cannot obtain a valid passport from their home country.

- However, a Reentry Permit does not exempt an LPR from compliance with any of the requirements of U.S. immigration laws.
- **A Reentry Permit still requires the LPR to demonstrate evidence that they have not abandoned their status after a temporary trip abroad.**
- **The LPR, upon reentry to the U.S., still may need to prove that their absence was temporary in nature even with the Reentry Permit.**
- Note that the Reentry Permit acts as solid evidence that the travel was temporary in nature and the LPR intended to return to the U.S.
- Also, the LPR in seeking admission to the U.S. beyond six months may be subject to inspection and admission to the U.S. This could include a review of inadmissibility grounds upon reentry.

What Is the Process for Requesting a Reentry Permit?

A Reentry Permit can be requested by filing Form I-131, Application for Travel Document with USCIS. An LPR must be physically present in the U.S. as a lawful permanent resident or conditional permanent resident. Given this, the applicant should continue to be physically present in the U.S. until USCIS accepts the case for processing. Ideally, this means until USCIS issues the receipt notice, Form G-1145 text or email notice. USCIS has refused cases where the LPR was present when the I-131 was mailed but not when the application was receipted for processing. USCIS may check travel records as to when the LPR departs the U.S.

The I-131 Application should be submitted with some evidence related to the planned travel and demonstrate that the travel is temporary in nature. The evidence included in the application should also demonstrate that the LPR has otherwise maintained their permanent resident status in the U.S. One question in the I-131 consists of asking about how the LPR filed their U.S. income tax returns.

A careful review of U.S. tax matters may be warranted for LPRs, especially for those with significant temporary travel overseas. This is an area where immigration lawyers should help with issue spotting and make referrals when necessary due to the intertwined nature of immigration and tax law.

Generally, USCIS must also collect biometrics from the applicant at USCIS offices in the U.S. It is best practice for the applicant to remain in the U.S. until biometrics are taken or be able to return to the U.S. for a biometrics appointment. As with many benefits requests, biometrics appointments may be requested to be rescheduled. However, failure to appear for biometrics may mean a denial of the I-131 Application. Biometrics can be requested to be expedited under certain circumstances, as noted in the I-131 Instructions.

Note that during the COVID-19 global pandemic, USCIS has in certain circumstances reused biometrics. If biometrics will not be required, USCIS will send a notice indicating that biometrics will be reused.

In light of the COVID-19 pandemic, it is best to plan a Reentry Permit application well in advance. Before the pandemic, it was necessary to plan several months, generally at least 60 days, in advance (if possible) to file and undergo any biometrics before departure unless the LPR can quickly return to the U.S. from abroad to attend a biometrics appointment. Given the ongoing pandemic and resulting impacts and delays, consider planning at least 5 to 6 months in advance, given current delays with scheduling biometrics and, in some cases, cancellations of biometric appointments

While it is not required often, the I-131 application for a Reentry Permit may require an interview with USCIS. If the application is approved, the Reentry Permit may be sent to an address in the U.S. or sent to a U.S. consular post or USCIS office abroad.

Validity of a Reentry Permit for LPRs

A Reentry Permit is generally granted for up to two years of multiple entry travel. However, an LPR that has been outside of the U.S. for more than four of the last five years since becoming an LPR will generally only be granted a one-year Reentry Permit.

There are a few exceptions for certain permanent residents, including:

- A civilian or military employee of the United States Government who was outside the United States pursuant to official orders. This also includes an LPR spouse or child of such person who is preceding, accompanying, or following to join such employee within four months;
- Employees of the American University of Beirut;
- Those employed (or a spouse or child of such person) by a public international organization of which the U.S. is a member, and;
- A professional athlete who regularly competes in the U.S. and abroad.

Note that for those LPRs with Conditional Permanent Residence, the Reentry Permit can only be issued until the two-year date of admission listed on the Permanent Resident Card Form (I-551). An applicant can use a Reentry Permit after a Form I-751, Petition to Remove Conditions on Residence or Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status is filed, to facilitate travel for up to the automatic extension period granted by USCIS.

We have seen occasions where reentry Permits were issued for only 12 months even if the LPR received an 18-month automatic extension on the USCIS receipt notice. For this reason, careful planning is required for Conditional Permanent Residents in this context.

A Reentry Permit can be applied for again as needed. However, note that where a prior document is still valid, a new I-131 application will be denied unless the applicant has returned the currently valid Reentry Permit to USCIS, or it was demonstrated as lost.

Challenges for Conditional Permanent Residents Abroad During the COVID-19 Global Pandemic

An LPR with conditional permanent residence provides its own set of unique challenges for an LPR that may be abroad related to COVID-19. As summarized in 9 FAM 202.2-2(c)(2):

- [a] conditional resident alien automatically loses LPR status on the second anniversary of his or her date of admission as a resident if the form to remove the conditions is not filed by that date (Form I-751, Petition to Remove the Conditions of Residence, for family-based status and Form I-829, Petition by Entrepreneur to Remove Conditions on permanent resident status, for employment-based status). However, the law allows DHS to accept a late petition if, and only if, the alien can establish that the failure to file on time was for reasons beyond his or her control.

A conditional LPR outside the U.S. must still file the required Form I-751 or Form I-829 timely for adjudication with USCIS. Failure to do so may make it difficult for any U.S. travel without the corresponding Receipt Notice from USCIS noting an automatic extension of status to assist with any travel back to the U.S. after the conditional I-551 has expired. Furthermore, a conditional LPR may also be reviewed for any abandonment-related issues upon entry by CBP.

Issued Related to Naturalization

Finally, members should note that an LPR that travels outside of the U.S. for lengthy periods may impact their eligibility for naturalization. Temporary travel outside of the U.S. may affect basic Form N-400 naturalization requirements. These requirements include basic eligibility requirements of physical presence in the U.S. and continuous residency with the statutory period required for naturalization (generally five years, or three years for spouses of U.S. citizens).

Notably, USCIS issued recent guidance on November 18, 2020, in Policy Alert PA-2020-23 on the Prerequisite of Lawful Admission for Permanent Residence under All Applicable Provisions for Purposes of Naturalization.¹⁵ As part of that detailed new guidance, USCIS indicates a framework to review issues of permanent resident abandonment in relation to N-400s. This new guidance should carefully be reviewed in advising an LPR abroad related to abandonment issues and naturalization.

These changes are currently being reviewed by the AILA USCIS Benefits Policy (HQ) Committee.

Conclusion

For LPRs planning for longer-term temporary travel outside the U.S. in light of the COVID-19 global pandemic, it is important to carefully review issues related to maintaining Permanent Resident status with LPRs in advance of any planned travel. This includes careful planning on the use of Reentry Permits, planning for Conditional Permanent Residents, and reviewing eligibility for naturalization.