



u.s. immigration - retention of u.s.

MSK Client Alert

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U.S. Immigration officials at ports of entry to the U.S. routinely question returning lawful permanent residents ("green card" holders) about the length of time spent outside the U.S.A. and the nature of their activities abroad. Generally, an absence from the U.S.A. of six months or longer will result in further inquires and requests for documentation to establish intent to retain lawful permanent residence status.

A U.S. "green card" allows the holder to reside in the U.S. as an immigrant as long as the holder's status does not change. However, that status may be lost if the "green card" holder is deemed to have abandoned his or her U.S. residence or if the individual lacks the requisite ties to the U.S. while living abroad.

The question of whether a "green card" holder has retained his or her status in the U.S. arises when the individual departs from the U.S. for lengthy periods of time usually exceeding one year. The determination of retention of U.S. residence depends upon the circumstances surrounding the individual's departure and his or her ties to the U.S. Among other factors considered in evaluating the retention of U.S. residence are the following:

- The individual's reason for departing from the U.S.A.;
- Whether the individual had a fixed date of return from the visit abroad;
- Whether the individual has exercised rights incident to U.S. permanent residence, including payment of U.S. taxes as a resident;
- Whether the individual has maintained business contacts within the U.S.;
- Whether the individual maintained a home and other property and financial interests in the U.S.; and
- The nature and permanency of the activities abroad, such as full-time employment actual residence and presence of family.

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The initial determination as to whether a holder of a "green card" will be readmitted to the U.S. is made by the immigration or customs officer at the port of entry. At such time, the officer may inquire as to the "green card" holder's intent to return to an unrelinquished residence in the U.S. and may request evidence supporting the "green card" holder's intent.

Upon return to the U.S., every "green card" holder must present proper documentation concerning his or her immigrant status. This documentation includes the Form I-551 or "green card" and, if the individual is returning from an absence abroad which is greater than one year, a re-entry permit, Form I-131, obtained by the "green card" holder prior to departure from the U.S. While the issuance of a re-entry permit does not guarantee re-admission to the U.S., it does function, along with the "green card", as evidence that the individual was lawfully admitted for permanent residence to the U.S. and that, in addition, the "green card" holder had the intention to return to the U.S.

Additionally, a returning "green card" holder should have the following documents available for presentation to the immigration officer at the port of entry to the U.S.:

- A copy of most recent federal income tax return - - showing filing as a U.S. Tax Resident. This is the most critical document establishing intent to retain U.S. residence;
- If the departure was for business, a letter from the U.S. employer confirming that the "green card" holder was temporarily transferred to a position abroad;
- U.S. credit cards, automobile club cards and other cards as evidence of business ties to the U.S.;
- Valid driver's license in the state of residence;
- Copy of property tax statement filed with the authority having jurisdiction over the "green card" holder's place of residence, if applicable;
- Official and semi-official documents with U.S. address listed as permanent residence; and
- Proof of membership in professional and social organizations in the U.S.

A U.S. "green card" holder who must depart the U.S. for a lengthy period of time will be able to travel and retain his or her U.S. immigrant status if the individual can document ties to the U.S.A. and when required, if the individual files a re-entry permit. All of these factors will be considered as evidence of the "green card" holder's intent to retain lawful permanent residence at the time of the departure and during the "green card" holder's absence and will ensure admission to the U.S. upon his or her return.