How Permanent is Permanent Residence? Abandonment of LPR Status

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Abandonment of Status

- LPR status not necessarily permanent
- LPRs ARE subject to removal
- LPRs may abandon their LPR status
What is the law?

• INA 101(a)(20) – “Lawfully admitted for permanent residence’ means lawfully accorded the privilege of residing permanently in the US as a immigrant in accordance with the immigration laws, such status not having changed.”

• INA 101 (a)(27) – “special immigrant” – “an immigrant lawfully admitted for permanent residence, who is returning from a temporary visit abroad”

• 8 CFR 211.1(a) – Documentary requirements for permanent residents

• Case law
  – Board of Immigration Appeals (BIA)
  – Circuit courts
Key Points

• Returning to US for short time every year does not protect against abandonment

• NUMBERS IMPORTANT BUT NOT DETERMINATIVE
Factors in Abandonment

• Purpose of departure

• Fixed date for visit abroad

• Objective intention to return to US as permanent home
Fixed end date for trip outside US

• “An extended period of absence from US . . . can be viewed as a temporary visit abroad if the end of the period of absence can be fixed by some early event.” Matter of Huang, 19 I&N Dec. 749 (BIA 1988)
Evidence of Intent to Return

- Family ties in US
- Tax records
- Proof of housing in US
- Employment in US
- Money in US
- Evidence of reason for trip abroad
DHS Abandonment Red Flags

• Staying outside US for more than one year
• Filing tax return as nonresident alien
• Close family living outside U.S.
• Employment outside U.S.
• Lack of fixed address in U.S.
What Happens at the POE?

- CBP officer
- Admissibility?
- Deferred inspection if questions about abandonment
- I-407
Who Decides Abandonment?

- Immigration Judge, in context of Removal Proceedings
  - Inadmissible under INA 212(a)(7)(A)(i) as someone not in possession of a valid unexpired immigrant visa?
  - Removable under INA 237(a)(1)(A) for being inadmissible at time of admission?

DHS has burden to show abandonment by “clear and convincing evidence”
What If You *Want* to Abandon?

• If in proceedings – make sure you don’t end up with *in absentia* removal order

• Sign I-407 at consulate
Abandonment vs. Disruption of Continuous Residence for Natz

• Natz applicants need to show 5 years (some 3) continuous residence immediately before application
Abandonment vs. Disruption

• Extended periods outside US can disrupt continuous residence
  – Less than 6 months = no disruption
  – More than 6 months but less than 1 year = presumption of disruption
  – More than 1 year = always disrupts
Rebutting Presumption of Disruption

• No termination of employment in U.S.

• Immediate family remained in U.S.

• Retained full access to home

• Did not find new employment while abroad
Rebutting Presumption of Disruption

• Bank statements
• Tax returns
• Proof of insurance
• Car registration
• Rent receipts
• House payments
• School/medical records
Natz and Trips of More Than One Year

• Always disrupts continuity of residence
• CIS will not look at reasons for absence
• Must wait four years and one day after date of return to apply for natz. 8 CFR 316.5(c)(1)(ii)
• Also look at abandonment issue
Can Pedro show 5 years continuous residence for natz? Did Pedro abandon his residence?

- Pedro entered US as an LPR in July of 2000 based on a relative petition filed by his brother. Since entering the US he has taken several trips to Mexico to visit family. Most of the trips lasted about 2 weeks. On June 15, 2007 he traveled to Mexico to visit his sick father. After he arrived, his father’s health deteriorated and Pedro stayed to take care of him. He did not return to the US until August 25, 2008.
Preserving Continuous Residence for Naturalization

• N-470, Application to Preserve Residence for Natz Purposes
• INA §316(b)-(c), § 317
• Two categories:
  – Employees/contractors of US govt, certain corps, public international organizations
  – People performing specific religious duties
Children

• Abandonment by parent imputed to child


Eduardo entered US as LPR at age of 12. Two years later his father got very sick and Eduardo and his siblings were brought back to Mexico to be cared for by a relative. His parents followed soon after. Nine years later, when Eduardo was 21, he tried to return to the US as an LPR. He was put in proceedings. IJ and then BIA ruled that his parents’ abandonment of their residency was imputed to their minor children.
Abandonment?

- Mario from Guatemala became an LPR in 1992. In 1998 he sold his home in Chicago and went back to Guatemala, where he owned a home. He lived and worked in Guatemala City from 1998-2001, returning to Chicago for a few weeks every summer to see his children. In 2001 he was laid off from his job in Guatemala City and his son promised to get him a job in Chicago. Mario came back to US, entering with his green card. He has been here ever since and now wants help applying for naturalization.
Abandonment?

- Marcella from Italy got her LPR status through her USC father in 2003. In 2005, after she graduated from college, she traveled back to Italy. She met Marcello, an Italian, and married him in 2007. She moved in with Marcello in his apartment in Florence and took a job. She returns to the US every year for a month, presenting her green card at the port of entry. While she’s in the US she stays in her parents’ house in Austin; she spends her time visiting friends, traveling, and hearing a lot of great music.
Abandonment?

- Inez from Mexico has been an LPR since 2006. She is married with one son. Last year her mother, who lives in Mexico, got very sick and Inez went back to take care of her. She thought she would be gone for 3 or 4 months but ended up staying for 13 months to care for her mother. Inez’s husband and son stayed in Austin in their rented apartment while she was gone. Inez’s employer kept her job for her and she went back to it upon her return to the US.
Abandonment?

- Zeba got LPR status in August 1991. In October 1991 she returned to Pakistan to marry. She married, and had a baby in September 1992. In October 1992 she returned to US for two months, then went back to Pakistan because her baby was sick. Sadly the baby died in October 1993, and she was unable to travel back to the US until November 1994 because of her grief. She had a re-entry permit and used it to enter the US in November 1994, staying for two months, when she went back to Pakistan to be with her husband. While there she gave birth to a second baby, returning to the US three months after his birth. Except for her first trip to the US, for every other trip she bought a round-trip ticket, starting and ending in Pakistan. She did some babysitting while in the US but never owned property or paid taxes.
Abandonment?

• Jorge became an LPR in 1980 and came to Arizona for 3 months, then returned to Mexico for 6 months. He then worked from 1981-1993 in Arizona 9 months per year, spending 3 months each year in Mexico. He then stayed in Mexico for about 24 months straight between 1993 and 1995. He worked in Florida for 6 months in 1995 before returning to Mexico at the end of the year. He then stayed outside the US until 2000 or early 2001, about 6 years. Between 1996-1998, while in Mexico, he was afflicted with Malta Fever or Brucellocis, which is a serious bacterial infection that causes chronic fevers, joint pain, anemia, and serious headaches. But he didn't return to the US until 2000, when he stayed for 15 months before going to Mexico again for four months. Since then he has more or less continued to spend about 9-10 months per year in the U.S.
Abandonment?

- Sanaa from Iraq got LPR status through her USC brother in May 1992. That month she filed I-130s for her husband and children in Iraq. Afraid that Saddam Hussein’s regime would harm her family if she didn’t return, she went back to Iraq in July 1992, getting a reentry permit before she left. In Iraq, Sanaa got a job at the Central Bank.

- In October 1994, Sanaa returned to the US with personal possessions and money. In December 1994, Sanaa applied for another reentry permit and went back to Iraq to take care of her sick mother-in-law. She returned to the US in June 1996 and was arrested and put into proceedings for having abandoned her LPR status.
Counseling Clients

• Discuss issue of abandonment when client receives permanent residence
• Letter to client and/or community education materials
• When filing for naturalization, review all absences since becoming LPR, not just last five years
Questions?

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