How Permanent is Permanent Residence?: Abandonment of LPR Status
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“Lawful permanent residence” sounds... permanent. But LPR status is not necessarily permanent. Lawful permanent residents (LPRs) are subject to the grounds of deportability and may be removed from the United States. Among the reasons for deportability is a finding that an LPR has abandoned his or her LPR status by failing to maintain permanent residence in the US. This article will explore when issues of abandonment arise for LPRs; how and by whom determinations of abandonment are made; which factors are considered in abandonment findings; and how to counsel clients to avoid abandoning their permanent residence.

Abandonment of LPR status is a different issue than disruption of the continuity of permanent residence for purposes of naturalization eligibility. Disruption of continuous residence delays eligibility for naturalization without affecting LPR status, while abandoning LPR status can lead to removal from the US. Advocates sometimes confuse disruption and abandonment since they both may arise during applications for naturalization, and both stem from absences from the US. Because the consequences of abandonment are so severe, it is extremely important to understand the differences between disruption and abandonment; this article will explain those differences.

The most important points to take away from this article:

- Abandonment leads to loss of LPR status and likely deportation
- Numbers are not determinative – there is no formula as to how much time outside the US equals abandonment; each situation requires an inquiry into the individual’s intentions and actions.
- A re-entry permit does not preclude a finding of abandonment.
- Abandonment is not the same as disruption of continuous residence for naturalization eligibility

When Abandonment May Arise as an Issue

There are two situations in which abandonment of residence is most likely to be an issue: applying for naturalization, and re-entering the US after a long trip abroad. Naturalization applicants must provide USCIS with detailed information, including dates for all their trips outside the United States since becoming permanent residents. This information may lead USCIS to believe that the naturalization applicant has abandoned her or his LPR status. Permanent residents who attempt to reenter the United States with their permanent resident cards after prolonged absences may find that CBP believes they have abandoned their residence.

Naturalization
The N-400, the application for naturalization, requires that LPRs provide a fair amount of information about their lives. This information includes:

1. All addresses in the past five years
2. Employers and schools in past five years, including their locations
3. Total days outside US in past five years
4. All trips outside US of more than 24 hours since becoming an LPR
5. Name and address of current spouse
6. Name and address of children
7. Whether the LPR has ever filed any Federal, state or local taxes as a “nonresident” or failed to file tax returns because he or she considered him or herself to be a “nonresident.”

All of these provide information about where the LPR has been living and working. Information provided on an N-400 may lead USCIS to conclude that a naturalization applicant has abandoned her or his LPR status. In such a case, USCIS could deny the naturalization application and ICE would put the LPR into removal proceedings.

An LPR may have spent significant time outside the US years ago, then re-entered on her or his LPR card and have lived here ever since without any absences. Even though the long absence may have occurred years ago, the LPR may still be vulnerable to a finding of abandonment. In one case decided by the Second Circuit, Ahmed, a native of Yemen, was an LPR. After losing his job in the US, he accepted a job in Bahrain, applying for a re-entry permit before he left the US. He left the US in 1982 and worked in Bahrain for the next nine years, returning to the US in 1991. While in Bahrain he made numerous visits to Yemen. Meanwhile he did not maintain property in the US, nor did he keep in touch with relatives in the US. Even though he returned to the US in 1991 and stayed for many years after that, the Second Circuit found in 2002 that he had abandoned his LPR status during his nine-year absence from the US. Being back in the US for more than a decade following that absence did not protect him from the finding of abandonment. *Ahmed v. Ashcroft*, 286 F.3d 611 (2d. Cir. 2002).

**Re-Entering the US After A Trip Abroad**

An LPR who returns from a long trip abroad may be stopped at the border by CBP. If CBP believe an LPR has abandoned his or her residence, the LPR should be issued a Notice to Appear (NTA) and put into removal proceedings. Sometimes, however, CBP tries to get LPRs to sign a statement indicating relinquishment of permanent residence, an I-407, and to leave the US.

Surrendering one’s green card and signing a statement relinquishing residency does not necessarily preclude maintaining LPR status. It may be possible in some circumstances to successfully demonstrate to an Immigration Judge that the LPR did not intend to relinquish LPR status, despite having turned over the green card and signed an I-407; consular officers are instructed that “it is not the statement renouncing residence, but the absence of a fixed intent to return, that results in the loss of LPR status.” 9 FAM 42.22
N.4.1(b). LPRs who want to fight charges of abandonment would do best, however, not to sign an I-407 at the border, but ask to be given an NTA.

Re-Entry Permits

An LPR who plans to be outside the US for more than a year may apply for a re-entry permit. 8 CFR § 223.2. An LPR who is outside the US for more than a year will not be able to re-enter the US with an I-551 card alone, and will need a re-entry permit or returning resident visa. 8 CFR § 211.1(a). Many people believe that having a re-entry permit is a guarantee against a finding of abandonment, but this is not the case. A re-entry permit does not preclude a finding of abandonment. An LPR with a re-entry permit may not be found to have abandoned residency based solely on the length of time spent outside the U.S. 8 CFR § 223.3(d)(1). As long as there were any other relevant factors, however, a finding of abandonment could be made.

How a Finding of Abandonment is Made

Only a judge can make a finding of abandonment. LPRs must be put into removal proceedings in order to be found to have abandoned LPR status. In removal proceedings, the burden is on the government to must prove deportability by “clear, unequivocal, and convincing evidence.” *Hana v. Gonzalez*, 400 F.3d 472 (6th Cir. 2005). Until an LPR has been found deportable, he or she remains an LPR. The burden on the government to prove abandonment is fairly high, but case law demonstrates that the government is sometimes able to meet this burden. And even if the government has a hard time making its case, few LPRs want to be put in removal proceedings.

There is no ground of deportability called “abandonment of LPR status.” ICE would charge an LPR it believed had abandoned his or her status under INA § 237(a)(1)(A) for being inadmissible at the time of admission. Why is this? Because LPRs who make temporary visits abroad re-enter the US as “special immigrants.” INA § 101(a)(27). If the LPR’s visit abroad was not in fact “a temporary absence” he or she is not admissible as a “special immigrant” under this provision. An LPR admitted as a “special immigrant” after a visit abroad that was not in fact “temporary” was inadmissible at the time of re-admission, and therefore deportable.

Factors in Abandonment

Numbers are Not Determinative

LPRs sometimes believe that as long as they return to the US for a short visit every six months or every year, they won’t lose their permanent residence. Other LPRs believe that if they spend more than a year outside the US they will definitely lose their status. Neither is true. Regular visits to the US by an LPR whose real residence is in another country will not protect that person from a finding of abandonment. Conversely, it is quite possible for an LPR to stay outside the US for more than a year and maintain permanent resident status.
There is no numerical formula that will tell you if an LPR has abandoned his or her status. The BIA has said that “what is a temporary visit cannot be defined in terms of elapsed time alone.” Matter of Huang, 19 I&N Dec. 749, 753 (BIA 1988). Each situation is evaluated on its own, and all factors weighed and considered. It is quite possible that an LPR could spend more than two years outside the US and not have abandoned her or his status. It is also possible that an LPR could make numerous trips of less than six months each outside the US and be found to have abandoned her or his status. Numbers alone do not tell the whole story – they are one part of the story and must be looked at in context.

If the number of days outside the US does not alone determine what makes a visit abroad “temporary,” what does? The INA does not specify, nor are there regulations that address this. One must look to case law, at both the BIA and federal District and Circuit courts, to understand what makes a visit outside the US “temporary.”

The overall guiding principle in abandonment is whether or not the LPR had an objective intention to return to the U.S. after a relatively short trip abroad, fixed by an early event, or that the LPR intended that the trip would end after an event that would occur in a relatively short period of time. See Huang, supra, at753, and Ahmed v. Ashcroft, 286 F.3d 611 (2d. Cir. 2002). Factors to consider include:

- Family ties – does the LPR have family in the US with whom he or she is in regular contact? Or are the LPR’s close family members living in another country with no plans to move to the US?
- Job – does the LPR have a job in the US that he or she can return to? Or is he or she working outside the US?
- Income tax returns – is the LPR filing as a US resident?
- Club memberships and other community ties – is the LPR actively connected to clubs or other organizations in the US?
- Property – does the LPR own or rent property in the US? Does the LPR own or rent property in another country?

The consideration need not be limited to these factors alone, and no one factor is necessarily more important than any other. The political situation in the LPR’s country of origin may play a role. In one case in the 6th Circuit, the court found that an LPR who had spent a total of four and a half years outside the US right after becoming an LPR, did not in fact abandon her residence. Hana v. Gonzalez, 400 F.3d 472 (6th Cir. 2005). Hana, an Iraqi woman, became an LPR in May 1992. She then filed I-130s for her husband and four children. In July 1992 Hana returned to Iraq and to her former job at the Central Bank. She returned to the US more than two years later, in October 1994. In December 1994 Hana went back to Iraq to care for her ailing mother-in-law, returning to the US more than two years later, in December 1996. All told, she spent most of her first four and a half years as an LPR in Iraq. Despite this, the court found that Hana did not intend to abandon her status in the US. The court in this case seems to have been very much swayed by considerations about Hana’s native country, noting that “Hana was acting to protect her family from a dictatorial regime with an infamous human rights
record” and that her decision to return twice to Iraq was “clearly motivated by [the intent to protect] the safety and welfare of her family.”

Caring for family outside the US does not always protect against a finding of abandonment, however. The Fifth Circuit found abandonment by a mother who had spent time outside the US to care for very sick children, one of whom died. *Moin v. Ashcroft*, 335 F.3d 417 (5th Cir. 2003). Moin spent significant time in Pakistan (48 months out of 54) after becoming an LPR. She stayed in Pakistan because her husband did not want to be separated from her, and in order to care for their two Pakistani-born children, one of whom died as an infant. The court in this case seemed quite troubled by the fact that Moin had flown on round-trip airline tickets that originated in Pakistan.

Even though the burden of proof on the government is high in abandonment cases, the government does prevail in some cases. LPRs who wish to live permanently in the US should do their best to ensure that they do not end up in removal proceedings over abandonment.

**Disruption of Residency for Naturalization Not the Same as Abandonment**

In order to be naturalized, an LPR must maintain continuous residence in the US for a statutorily-determined period; for most applicants this is five years; some applicants only need three years of continuous residence. INA § 316(a) and § 319. Continuous residence as an LPR does not require the LPR to be physically present in the US for the entire statutory period. Absences from the US of less than six months do not break the continuity of residence. Absences of more than six months and less than one year do break the continuity of residence – but naturalization applicants have the opportunity to try to convince USCIS that continuity was not broken. Absences of more than one year may not apply for naturalization until at least four years from the date of their return. INA § 316(b); 8 C.F.R. § 316.5(c)(1)(i).

Disruption of the continuity of residence does not lead to loss of permanent resident status. It only means that the LPR must wait longer before being eligible to naturalize. This is quite different from abandonment, which may lead to loss of LPR status and removal from the US.

**Children**

If an LPR parent is found to have abandoned his or her residence, and has taken his or her child out of the US, the parent’s abandonment will be imputed to the child. The child’s intentions are irrelevant – only the parent’s are, according to the BIA. *Matter of Zamora*, 17 I&N Dec. 395 (BIA 1980).

**Advising LPR Clients**
At the time your clients become LPRs, it is a very good idea to inform them about the possibility of abandonment of LPR status. LPRs may not understand how their status differs from citizenship, and that it is quite possible to lose LPR status due to absences from the US. LPRs should understand that merely returning to the US every six months for a visit will not protect them from a finding of abandonment.

If you regularly send a letter to clients once they become LPRs, consider including information related to abandonment of LPR status. It is a also good idea to encourage LPR clients to consult with you if they plan to spend more than six months outside the US. Encourage LPR clients whose trip or trips outside the US might be problematic, to keep documentation about the reasons for their trips abroad, as well as evidence of ties they maintained in the US while outside the US. You may want to counsel LPRs who want to spend enough time outside the US that you think abandonment might be an issue to do as many of the following as possible – and retain documentation:

- Pay US taxes as a Resident Alien (instead of Non-Resident Alien)
- Own or rent property in the US; pay utility and other bills for that property
- Have (and use) US credit cards
- Have (and use) bank account(s) in the US
- Maintain close ties with family members in the US
- Maintain employment in US
- Document that any work abroad is temporary
- Avoid traveling on round-trip airline tickets that originate in another country

Remember when you are working with applicants for naturalization that abandonment may arise as an issue. Make sure that you analyze naturalization applications for possible abandonment. When you think there is a possibility that abandonment could come up, advise clients about what it is and what you believe the risk of such a finding is.

If you have LPR clients for whom you think abandonment might be an issue, and who intend to travel outside the US for a long period, make sure that they understand the risk of being stopped and questioned about abandonment when they return to the US. CBP officers sometimes try to pressure LPRs into signing I-407s at the border. An LPR who signs an I-407 will have a harder time fighting a charge of abandonment than an LPR who refuses to sign, and accepts a Notice to Appear in Immigration Court.