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### **ABSENCES FROM THE U.S. LASTING 6 MONTHS OR LONGER**

#### **Absences of 6 Months but Less than A Year**

Six months (180 days) is a bit of a dividing line for U.S. residents who've been outside the country. Once you've been gone that long, the law regards you as an applicant seeking admission to the U.S. (under I.N.A. § 101(a)(13)(C)).

Upon return to the U.S., you'll need to be ready to show documentation to overcome any new inadmissibility issues that might have come up in your life, but the primary hurdle you will have to overcome is to prove that you did not intend to abandon your legal permanent resident status and that you always intended on returning to the US.

If you return to the U.S. just before 180 days is up, U.S. border officials are always free to decide that you meant to make your home elsewhere; that is, abandoned your U.S. residence. To prove otherwise, bring copies of documents showing that the U.S. is still your home base. Examples include copies of U.S. tax returns, a home lease or mortgage, evidence of employment, and so on. Also bring written evidence of your reasons for not traveling back to the U.S. earlier, such as doctor's statements or copies of notifications that your flights were canceled.\

#### **Absences of More Than 1 Year**

After one year outside the U.S. your legal permanent resident status will be considered to be canceled. This means you could be denied entry to the U.S. and your case will not be as simple as a case in which it is over 6 months but under a year.

***\*\*\*If possible, it is important that you file the application for a Returning Resident Visa (described below) before you get to the one-year mark.\*\*\****

#### **If Border Official Does Not Grant**

A border official who feels that you've abandoned your permanent residence isn't going to send you back immediately, but rather let you into the U.S. with a notice that removal (deportation) proceedings are being initiated against you (a notice to appear or NTA). You will have to appear in immigration court.

In court you will have an opportunity to show the judge that you didn't intend to abandon your residence. If placed into removal proceedings, you will be able to prove that you maintained

residency in the U.S. with the help of an attorney. The burden of proof in removal proceedings is on the Government to prove that you did indeed intend to abandon your residency status in the U.S. Since intent is extremely difficult to prove the Government is rarely successful in these cases so long as the individual has the proper evidence or hires competent counsel to submit the necessary documentation.

## **WILL USCIS CONSIDER THE CURRENT COVID-19 SITUATION AS AN EXCEPTIONAL CIRCUMSTANCE AND ALLOW AFFECTED LPRS PRESENTLY OUTSIDE OF THE U.S. TO RETAIN THEIR LPR STATUS?**

There has not been an announcement or policy exception issued by USCIS regarding this issue. LPRs who have stayed outside of the United States for more than one year, or longer than the validity of their Re-Entry Permits, are generally considered to have abandoned their LPR status.

In either of these scenarios, you will need to apply for an SB-1 Returning Resident visa with the Immigrant Visa (IV) Unit.

### **Returning Resident Visa**

If your application for returning resident status is approved, this eliminates the requirement that an immigrant visa petition be filed on your behalf with the DHS, USCIS. You will need to be interviewed for both your application for returning resident status, and usually later for the immigrant visa. An SB-1 applicant is required to establish eligibility for an immigrant visa and have a medical examination. Therefore, this involves paying both visa processing fees and medical fees.

### **Qualifying for Returning Resident Status**

Under provisions of immigration law, to qualify for returning resident status, you will need to prove to the Consular Officer that you:

1. Had the status of a lawful permanent resident at the time of departure from the United States;
2. Departed from the United States with the intention of returning and have not abandoned this intention; and
3. Are returning to the United States from a temporary visit abroad and, if the stay abroad was protracted, this was caused by reasons beyond your control and for which you were not responsible.

### **Applying for a Returning Resident Visa**

If you wish to apply for a Returning Resident (SB-1) immigrant visa, you should contact the nearest U.S. Embassy or Consulate in advance of your intended travel (at least three months in

advance, if possible) to permit sufficient time for visa processing. As part of the visa application process, an interview at the U.S. Embassy or Consulate is required. Review country-specific instructions and information by reviewing the [U.S. Embassy or Consulate website](#) where you will apply.

## **Required Documentation**

When applying for a Returning Resident (SB-1) immigrant visa, you should submit the following forms and documents to the U.S. Embassy or Consulate where you will apply:

- A completed Application to Determine Returning Resident Status, Form [DS-117](#)
- Your Permanent Resident Card, Form I-551
- Your Re-entry Permit, if available

**You must also submit supporting documents that show the following:**

- Dates of travel outside of the United States (Examples: airline tickets, passport stamps, etc.)
- Proof of your ties to the United States and your intention to return (Examples: tax returns, and evidence of economic, family, and social ties to the United States)
- Proof that your protracted stay outside of the United States was for reasons beyond your control (Examples: medical incapacitation, employment with a U.S. company, etc.)

A consular officer will review your application and supporting documents to determine whether you meet the criteria for Returning Resident (SB-1) status. If you do, you must be eligible for the immigrant visa in all other respects in order to be issued a Returning Resident (SB-1) immigrant visa.

## **Required Fees**

The following are the required fees:

- Application to Determine Returning Resident Status, Form DS-117. Select [Fees](#) for current Department of State fees.

Additionally, if you are approved for Returning Resident (SB-1) status, the following fees will be required based on the immigrant visa processing explained below:

- Form DS-260 application processing fee
- Medical exam and vaccination fees

## **Instructions from the US Consulate in Berlin, Germany**

### [Qualifying for Returning Resident Status](#)

1. Applying for Returning Resident Visa
2. [If your Application to Determine Returning Resident Status is Not Approved?](#)

If you wish to apply for a Returning Resident (SB-1) immigrant visa, you should submit the following forms and documents:

- A completed Application to Determine Returning Resident Status, [Form DS-117](#);
- Your original Permanent Resident Card, [Form I-551](#);
- Your Re-entry Permit (if applicable).

You must also submit supporting documents that show the following:

- Dates of travel outside of the U.S. (Examples: airline tickets, passport stamps, etc.)
- Proof of your ties to the U.S. and your intention to return (Examples: tax returns, and evidence of economic, family, and social ties to the U.S.)
- Proof that your protracted stay outside of the U.S. was for reasons beyond your control (e.g. medical incapacitation)

Please mail the forms and documents to:

**U.S. Consulate General**

Immigrant Visa Unit  
Giessener Str. 30  
60435 Frankfurt

**U.S. Consulate General**

PSC 115 Box 1011  
DPO AE 09213-0115

After we have reviewed the documents, we will schedule an interview with a Consular Officer to determine whether you meet the criteria for Returning Resident (SB-1) status. If you do, you must be eligible for the immigrant visa in all other respects in order to be issued a Returning Resident (SB-1) immigrant visa.

You will need to be interviewed twice: First to review your application for returning resident status, and if approved, also for the immigrant visa. An SB-1 applicant is required to establish eligibility for an immigrant visa and have a medical examination.

**Therefore, this involves paying the Returning Resident application fee and, if approved, the immigrant visa processing fee, as well as the medical fees. For information on fees and forms of payment, please click [here](#).**

**Please note that the Returning Resident application fee is not refundable if your application is refused!**

- [PreviousQualifying for Returning Resident Status](#)

Website of US Embassy in Berlin, Germany: <https://de.usembassy.gov/>