

## America - make it your home

Immigration Newsletter from the desk of Wolf W. Kaufmann, Esq.

---

THE LAW OFFICES OF WOLF W. KAUFMANN  
11801 PIERCE STREET, SUITE 200  
RIVERSIDE, CA 92505

(951) 710-3250 FAX: (951) 750-5062 WWW.WOLFKLAW.COM

### A new year - a new look?

As we head into the new year we would like to try out a few changes. Readers have advised us in the past, that our “newspaper” style - two columns, and Times New Roman type - would be too old-fashioned in the era of blogs. Most readers actually seem to read our newsletter online, so may be it is time to change to a blog-style. Therefore today we will try a new font, one column only, and add even a few sprinkles of color. However, you know that for us appearances do not count as much as content. So you can look forward to receiving well researched and informative news from the immigration world just like you did in the past.

### My Green Card and a re-entry permit: can I stay abroad forever?

One of the perpetual myths in the immigration world is that if you have a green card, but do not live in the United States, you do not need to worry if you have a “re-entry permit or if you travel once a year to the U.S.” If I would be a cynic I would create a new saying: “The road to deportation is plastered with re-entry permits.”

Let me quickly restate what a “green card” and what a “re-entry permit” are: The green card is a permit to indefinitely reside within the United States and to take up any employment. The key word here is “reside.” The green card permits you to live in the United States, work in the United States, travel abroad for fun or business for a short while and come back to your nice home, your job, your family in the United States.

#### **A green card is no ez-pass...**

The green card is not some kind of “ez-pass” (New Yorkers will know what that is: a device that lets you speed through the toll lanes on the bridges, tunnels and highways) for the immigration checkpoints at the airports or borders. If you “reside” abroad, that is have your main home abroad, work abroad, and use your green card only to come to the United States once or twice a year for vacation, you will eventually run into trouble.

The law is pretty clear on this topic: if you do not maintain a “domicile” in the United States, that is if you do not have the “center of your life activities” such as family, home residence and workplace, in the United States, the government can find that you have abandoned your “residency” and no longer have the right to use your green card and its privileges. Customs and Border Protection (CBP) officers can challenge you at any border inspection station and can refuse to admit you as a legal permanent resident. This happens many times every day at our airports and border crossings.

## America - make it your home

Immigration Newsletter from the desk of Wolf W. Kaufmann, Esq.

---

THE LAW OFFICES OF WOLF W. KAUFMANN  
11801 PIERCE STREET, SUITE 200  
RIVERSIDE, CA 92505

(951) 710-3250 FAX: (951) 750-5062 WWW.WOLFKLAW.COM

### **But I travel once a year to the U.S. I have been told that is enough to keep your Green Card.**

A few days ago I had a client call me: I have been told if I travel once to the U.S. in a year this is enough. Now they took away my Green Card! That can't be right!

It seems there is a lot of confusion when it comes to the "one-year-rule" as I want to call it. The law says, that you cannot use your green card to enter the country, if you have been abroad for more than one year and you do not have a re-entry permit. In this case you would have to apply for a visa at a consulate abroad and those visa are very hard to get.

Therefore most people who own a green card but live abroad try to enter the U.S. at least once every 12 months. This is fine to keep the green card working as an entry permit. However, this does not help with the general rule I just described above.

Therefore let me phrase the "one-year-rule" differently: *If you do have a domicile in the United States to which you want to return to, you can use your green card to do so only if you have not been abroad for longer than one year. If you stayed abroad longer, and now want to return to your domicile, you need a re-entry permit. But if you do not have a domicile, traveling once a year will not help you avoid abandonment.*

### **So I will get a re-entry permit! Now I can live abroad. Or not?**

May be. The re-entry permit allows you to enter the country using your green card even if you stayed outside of the country for longer than one year. But you still need to be *returning to your domicile*. If the border officers find that you do not have such a domicile or have *abandoned it*, they will not let you enter, even if you have a re-entry permit. So why get a re-entry permit then?

Here is are two examples where a re-entry permit works: You have had a green card for 3 years and now decide to study for 2 years in Singapore. You do not plan to come home during these two years, but you definitely want to return home after completion of your studies. This is a typical case for a re-entry permit. Another example: You work for XY Corp in New York City and have a green card. Your employer just opened a new branch in Frankfurt and wants you to take care of business there until the local staff will be trained. Your employer and you think it might take up to two years. Even though you will travel back to New York quite often, you want to be sure you won't have any abandonment issues and apply for a re-entry permit.

## America - make it your home

Immigration Newsletter from the desk of Wolf W. Kaufmann, Esq.

---

THE LAW OFFICES OF WOLF W. KAUFMANN  
11801 PIERCE STREET, SUITE 200  
RIVERSIDE, CA 92505  
(951) 710-3250 FAX: (951) 750-5062 WWW.WOLFKLAW.COM

Now let's change both examples a bit: The student wants to study in Singapore and then hopes for finding a job either there or in Thailand, where his family lives. He leaves his home in the U.S., takes all his possessions and moves to Singapore. After about a year of studies, he begins sending resumes to companies in Bangkok. To visit some friends, he plans to fly back to the U.S. for a short vacation. He is challenged at the airport and the officers find that he abandoned his domicile: he does not show that he intends to return to his former place of living, job etc. in the U.S.

Our expat worker in Frankfurt is promoted to be the boss of the new office. He marries a German, buys a house in the Taunus and has children there. Instead of staying one or two years, he reapplies for a re-entry permit and plans to stay in Frankfurt for at least two more years, may be longer. He also considers taking a job in the company's office in London, for a change. He also is challenged at the airport and eventually is found to have abandoned his domicile in New York.

As you will have noted, the key term to keep your Green Card is "*return to your domicile in the U.S.*"

### **My house, my car, my yacht... my domicile?**

How do I establish a domicile? Here things become tricky. A domicile is clearly established if you buy a house in the U.S., move in, and work in an office or factory around the corner. However, in today's world of global flexibility, many people do not put down these kind of roots. You might work out of an office in London this week, in Singapore next week and in New York the rest of the month. You might live in a rented apartment in all three cities or even only in an extended stay hotel. Your employer may be an international corporation with no "headquarters." While you work in New York, your boss might be located in Zurich. You might still be single and not know a soul in America, but you may have extended family in Italy, in Germany and in Iran.

In all these cases, a border officer might easily claim that you do not have a domicile in the United States. On the other hand, there are some good arguments that can be made on your behalf.

Property in the U.S., an American employer and family ties to the United States are very helpful to establish a domicile here. It is also very important to be able to show that the stay abroad is limited in time and that this limit is set before you leave: for example if you can show that your course of study will take two years, or that your employer sends you abroad only for as long as it takes to train local staff etc. It helps if you only have a temporary permit to stay in the other country, for example when you are being

## America - make it your home

Immigration Newsletter from the desk of Wolf W. Kaufmann, Esq.

---

THE LAW OFFICES OF WOLF W. KAUFMANN  
11801 PIERCE STREET, SUITE 200  
RIVERSIDE, CA 92505  
(951) 710-3250 FAX: (951) 750-5062 WWW.WOLFKLAW.COM

sent to Paris and you are an Iranian citizen holding only a 1-year visa to live in France.

Many green card holders forget that they are subject to U.S. tax laws. A holder of a green card must file an income tax return as a *resident* every year, regardless where in the world his income is coming from. Not filing a tax return or filing as a non-resident is being seen as proof that a resident has abandoned his domicile.

Having family in the U.S. helps, and having family abroad can be detrimental to keeping a domicile in the U.S., the same goes for property. Family emergencies, on the other hand, can be a legitimate reason to stay abroad for a long time: courts have accepted the argument of some foreigners who stayed several years abroad to care for elderly or dying family members and yet maintained that they intended to return to their domicile.

As you can see, there is no bright line. This is why we think you should consult with an attorney before you make any travel plans for longer absences.

While we might be of help when you get challenged at an airport or border crossing, it usually is better to obtain a consultation before you plan to apply for a re-entry permit or to leave the country.

### **What to do at the airport if I get challenged?**

If you get challenged at an airport or border crossing, the officer will usually ask you to attend a "secondary inspection." There other officers will ask you many questions about your travel, your stay, your circumstances, your job etc. If they determine that you might have abandoned your domicile, they usually will tell you that your green card is no longer valid and that you abandoned your residency. They might ask you to sign a form called I-407 and offer to admit you as a tourist instead.

However, here is where you need to be careful: the officers have no authority to find that you abandoned your residency. *Only an immigration judge can do so!* However, if you sign form I-407 you *voluntarily give up your green card*.

Therefore you have to think carefully: instead of signing the I-407 and giving up your green card voluntarily, you can insist to have a hearing with an immigration judge. In this case the officers normally will "parole" you into the country, that means you are allowed to enter the country only for the hearing in immigration court. That hearing can be in a few days, weeks or months. Theoretically the officers could even detain you, that is arrest you. In that case you would be brought before an immigration judge within days. However, this seldom happens.

## America - make it your home

Immigration Newsletter from the desk of Wolf W. Kaufmann, Esq.

---

THE LAW OFFICES OF WOLF W. KAUFMANN  
11801 PIERCE STREET, SUITE 200  
RIVERSIDE, CA 92505

(951) 710-3250 FAX: (951) 750-5062 WWW.WOLFKLAW.COM

Once in court, you can make all the arguments we have been discussing here. Of course, I think you should not attempt to do so without an attorney. You have the right to have an attorney represent you, but on your own cost.

If the judge finds that you did not abandon your residency, everything will be fine, you will be admitted to the country and keep your green card. If not, the judge will take away the green card and order you "removed," that is deported. Depending on the circumstances you might be barred from coming back to the United States for a while.

The decision to fight it in court or to voluntarily give up the green card is not an easy one. In many cases giving up the card might be the better decision, because usually this will not have negative consequences for future travel as a tourist. As I said before, often the traveler is offered to be admitted as a tourist right away, so that you don't need to change your travel plans.

As always, if you have any questions, please contact me. This newsletter can only give general information and cannot substitute for a consultation.