

January 22, 2014

Obtaining a Returning Resident Visa

Question: *"I am a Legal Permanent Resident (LPR) of the United States, married to a U.S. citizen who filed the petition that allowed me to get my green card. My husband and I have been living in Jamaica for the past three years and we now want to return to the United States, but my green card has expired. Will I need a new green card in order to enter the U.S.? If so, what will I need to do in order to obtain one?"*

U.S. legal permanent residents, or "green card" holders, are expected to live permanently in the United States. Legal Permanent Residents (LPRs) who have been outside of the U.S. for more than one year (and did not apply for a reentry permit before leaving) have limited options for reentry into the U.S, as their LPR status is no longer valid. Under U.S. immigration law, permanent residents do have the right to travel to and from the United States without restraints, but are expected to live primarily in the U.S. If the duration of their trip is less than one year, the LPR simply needs to present an unexpired green card and valid passport at the port of entry for admission into the U.S. If the LPR has been outside of the U.S. for more than one continuous year and does not have a valid reentry permit, then the person no longer has valid LPR status. Their options are:

- Abandon their LPR status and apply for a non-immigrant visitor visa. This will not allow you to live in the U.S., but only to visit for short periods of time.
- Begin the immigrant visa petition process again. You will be responsible for re-filing all paperwork and paying all the fees.
- Apply for a Returning Resident (SB-1) Visa.

The one-year time limitation does not apply to the spouse or child of a member of the Armed Forces of the United States, or of a civilian employee of the U.S. Government stationed abroad pursuant to official orders. In this case, the spouse or child must present their green card and passport, not have relinquished residence, and be preceding or accompanying the member or employee, or be following to join the member or employee in the United States within four months of the return of the member or employee.

How does a reentry permit work?

If you know in advance that your trip will be longer than one year, you should apply to U.S. Citizenship and Immigration Services (USCIS) for a reentry permit before you depart the U.S. Any permanent resident is eligible to obtain a reentry permit, which allows the resident to stay outside of the U.S. for duration of the permit's validity—usually two years. The resident must file a Form I-131 (Application for Travel Document), which is available on the USCIS website at www.uscis.gov. The LPR must be physically present in the United States when the form is filed, which should be no fewer than 60 days before the intended date of departure from the

U.S. After the application is filed, USCIS will inform the LPR when they must appear at a designated Application Support Center to obtain biometrics (such as fingerprints). Once biometrics are provided the LPR may leave the U.S. and USCIS can send the reentry to any U.S. embassy or consulate, where it can be picked up in person.

It is important to note that all applications for reentry permits *must* be filed from within the United States. If an applicant has already left the U.S., then they are not eligible to apply for the reentry permit and must return within one year.

How do I get a Returning Resident Visa?

If you did not apply for a reentry permit before you left, and you have now been away from the U.S. for more than one continuous year, you can apply for a Returning Resident (SB-1) visa. To qualify to receive a returning resident visa, you must provide evidence that you:

- Were lawfully admitted to the United States as a permanent resident,
- Departed the United States with the intention of returning,
- Maintained your intention to return the United States during your time in Jamaica, and
- Were unable to return to the United States for reasons beyond your control.

Examples of such evidence include, but are not limited to, documentation regarding your status in the U.S. and dates of travel, proof that you have continued to file U.S. tax returns and maintained economic or social ties to the U.S., and evidence that the protracted stay was due to circumstances beyond your control.

If you believe that you meet ALL of the criteria listed above, you should email KingstonIV@state.gov to schedule an appointment for a returning resident visa. On the day of your appointment, you should bring a valid passport, your expired green card, a completed DS-117 form, and \$380 USD to the U.S. Embassy.

There is no guarantee that your application will be approved, and no refunds are available if the application is denied. If the returning resident visa application is approved, the Consular Section will schedule a second appointment for you to present the other required documentation, such as a medical exam and police certificates.

If the application is refused, then the applicant is considered to have abandoned their residence in the United States. If they wish to live in the U.S. again, they will need to begin the immigrant visa application process again and have a new petition filed on their behalf.

Abandoning Legal Permanent Resident Status

If an LPR stays outside the U.S. for over a year or past the validity of their reentry permit, and their legal permanent residence has lapsed, it is also possible to travel in the future to the United States on a non-immigrant visa. Please note, however, that this visa will not allow you to live permanently in the U.S., but only to visit for short periods of time. In order to begin this process, the former LPR must schedule an appointment for a non-immigrant visa at the U.S. Embassy and submit a form I-407 (Abandonment of Lawful Permanent Resident Status). After surrendering their green card, they may apply for a non-immigrant visa, but will be required to

meet all the same requirements as any other applicant. There is no guarantee that a former LPR who has abandoned their status will receive a visitor visa.

In conclusion, the best way to avoid these issues is to maintain your legal permanent resident status. As an LPR, you are able to take as many trips to Jamaica as you wish, but you must not remain outside the U.S. for more than a year. If you know you need to take a trip that will last more than one continuous year, apply for a reentry permit from USCIS before you depart. Also be sure that your green card and passport will valid for the duration of your trip. These simple steps and advanced planning will help you maintain your LPR status and avoid paying for a new immigrant petition or SB-1 visa.

For additional information regarding all types of non-immigrant and immigrant visas, please visit our website at: <http://kingston.usembassy.gov/visas.html>.