

A complete guide for Green Card holders stuck outside the US because of Covid-19

Synopsis

Many green card holders have been constrained to stay outside the USA continuously for one year and more. Under normal circumstances, that is considered to be an abandonment of the permanent resident status, your green card. What can you do about this now?



Rajiv Khanna
Managing Attorney,
Immigration.Com,
Contributor Content

Khanna is a member of the Virginia and D.C. Bars and the principal of the Law Offices of Rajiv S. Khanna, PC. Since 1993, he has focused his and the firm's practice on employment and business-based immigration and related administrative and federal audits, investigations and litigation. The firm represents individuals and businesses from every major city in the US and internationally.

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Unexpired Green Card

The U.S. government agencies directly involved with this issue are well aware of the practical difficulties. But, unfortunately, they have been slow in formulating ameliorative policies despite recurring problems for boarding passengers. As late as March 5, 2021, the U.S. Customs and Border Protection (CBP) has issued instructions to commercial airlines. The instructions allow airlines to permit boarding for any green card holders whose green cards have not expired even if they have been living outside the U.S. for one year or more continuously without advance permission from the USCIS (referred to as a reentry permit), or any other related documents.

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Expired Green Card

Under the March 5th CBP guidance, an expired green card can still be used for boarding, provided it was issued with a ten-year expiration date. When in doubt, the airlines should contact the CBP's Regional Carrier Liaison Group (RCLG) for assistance with the boarding requests. However, do note that RCLG communicates with airlines only, not with travelers or their lawyers.

Historically, U.S. consulates issued travel permissions (boarding foils) in cases of expired green cards. Their standard operating procedures now instruct that expired green card cases should be worked out with the CBP; boarding foils are now usually granted for lost or stolen green cards.

If you are able to resolve the boarding difficulties, your next challenge will be at the U.S. airport. There, the CBP finally decides whether you are entitled to enter the U.S. Fortunately, so far, the anecdotal evidence suggests that if your delayed absence is reasonably commensurate with the COVID-19 difficulties, you should be able to enter the U.S.

If the RCLG avenue does not work out for any reason, the airline or you can also try contacting the CBP at the U.S. airport where you will be entering. They have proven to be helpful in many such instances.

Failing all of the above options, you may need to apply for an SB-1 visa at a U.S. consulate. An SB-1 visa allows you to return to the U.S. and resume your green card status. You have to justify with evidence that the absence from the U.S. is for reasons beyond your control. Note that currently, the consulates are struggling against visa backlogs and reduced functioning. Therefore, it may be challenging to obtain an SB-1 visa expeditiously.

Land Ports of Entry

U.S. entry by land follows a set of procedures different from travel by air, where you may not even be permitted to board an aircraft. The CBP officers at the land ports can waive entry documents for "good cause." The waiver request is made by filing a Form I-193, Application for Waiver of Passport and/or Visa at the port. Ultimately, the CBP decides on the spot whether your reasons for absence are acceptable.

Regrettably, the official sources of information are wholly deficient. The CBP frequently asked questions direct you to work with the U.S. consulates if you have been out of the U.S. for one year or more; the consular websites instruct you to contact the CBP. The ways out of this circle lie through the airlines reaching the RCLG, the airline or you contacting CBP at the port, you applying for the SB-1 visa through the consulate, or entry via land. Additionally, we have also been recommending contacting your congressional representative for assistance. They can often cut through the multiple-agency red tape.

Effect of Absence on Naturalization

Even if the U.S. government holds your stay abroad excusable because of factors beyond your control, the USCIS cannot change the periods provided by law for naturalization. For people not married to U.S. citizens, the law requires that to apply for naturalization, you must have been a green card holder for five years and been physically present in the U.S. for thirty months. If you leave the U.S. for one year, the clock for the required five years is reset. None of the time you were in the United States before you left the country counts toward your physical presence. But, if you return within two years, you become eligible to file for naturalization four years and one day after you return.

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