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# Green card holders stuck in India need to prove US ties

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MUMBAI: Immigration attorneys are facing a host of queries from green card holders, stuck in India either owing to travel restrictions or personal exigencies – such as their own illness or that of close relatives. In many cases, inquiries are being made on behalf of parents, who were visiting India and the pandemic put their travel plans to the US in complete disarray.

A green card holder who has been outside the US, for more than 180 days but less than one year, has to prove that he or she has not abandoned permanent residence in the US. For those who have spent more than a year outside the US, it is tougher – it results in automatic loss of legal permanent residence (LPR) status, unless steps were taken prior to

departure to prevent this loss of status.

## Stay outside US by green card holders

Stay in India (or any other foreign country)	Challenges
Absence from US of less than 180 days (No presumption of abandonment of permanent residence)	No challenges in returning to the US

## residence)

Absence from the US of more than 180 days, but less than one year (There is a rebuttable presumption that the green card holder may have abandoned permanent residence. The onus is on the holder to prove otherwise)

Be able to prove why they were unable to return within 180 days

- Furnish proof of ties with the US – such as house (rent receipts, property tax receipts); employment in US; US tax returns, bank account details, ties with family and community in the US

Absence from the US of more than one year (Automatic loss of legal permanent residence status)

- Obtain an SB-1 visa
- If such a visa cannot be obtained, try and board the flight in India/other country and explain at the point of entry in US that the green card has not been abandoned. Ties with US will need to be proved

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The large number of such queries received by immigration attorneys, has perhaps prompted the American Immigration Lawyers Association (AILA) to put out a useful flyer.

# WHAT YOU SHOULD DO

**According to AILA (American Immigration Lawyers Association)**

- If absence from US less than a year, people should travel back as soon as possible
- Should prove they are residents of US with help of rent or property tax receipts, valid driver's licence, bank records, etc
- Those outside for more than a year should first try to apply for returning resident or SB-1 visa

“If the absence from the US is less than a year, we are advising them to travel back as their residence in the US is not presumed to be ‘abandoned’. Even when travelling within the year, it is important that the green card holder should be able to prove that he or she is a resident of the US. Ties to the US can be shown with the help of rent receipts, property tax receipts, valid driver's license, financial evidence of continued US ties, such as US tax returns, banking records, to name a few. It is also important that they can show that their stay in India (or any other foreign country) was temporary,” states Poorvi Chothani, immigration attorney and managing partner at LawQuest.

“With respect to green card holders who have been outside for more than a year, they should first try to apply for the returning resident or SB-1 visa. On the ground level, obtaining an appointment at the US Consulate during the pandemic can be challenging. Even pre-Covid, the US consulates have not been very generous in issuing SB-1 visas,” explains Cyrus D Mehta, founding partner of an immigration law firm in New York.

Chothani illustrates a case where a client could not travel within 180 days because she was down with a bad case of Covid, and then as a sole caregiver had to attend to her mother – a very senior citizen who had also contracted this virus.

This client had prudently maintained evidence of her attempts to travel during the early days of the pandemic, and preserved her medical records and those of her mother. She can prove ties with the US as she has a residence in America, while she is a widow her children are in the US, she also has American investments which bring her a good income. Preparations for applying for an SB-1 visa for this client are underway.

Rajiv S. Khanna states that last month, the US Customs and Border Protection (CBP) issued a reminder to the airlines to let people board as long as the green card date has not expired. Any queries regarding boarding can be directed to the concerned CBP officials and the passenger can be allowed to board.

“I anticipate that a judgement about the status of their green card (if the stay outside the US is over a year) will be made in what

is referred to as ‘secondary inspection at a US port of entry. CBP is likely to take into account the involuntary nature of absence from the US,’ explains Khanna.

“Thus, if the green card holder cannot obtain the SB-1 visa, and the green card date has not expired, they can still try to board a flight and assert that they have not abandoned their green card at the US port of entry,” adds Mehta.

“The US courts have provided a test regarding green card abandonment, which is quite generous. Even if the green card holder has been outside the US for much longer than a year, the key question is whether they consistently harboured an intent to return to the US and continued to maintain ties with the country. Under the law, the government has a very heavy burden to prove that the green card holder has abandoned that status. During Covid, a green card holder who has been away for more than a year still has a good chance of being allowed entry if this person otherwise kept ties with the US,” states Mehta.