



## FAQ FOR GREEN CARD HOLDERS DURING THE COVID-19 PERIOD

*Posted on April 13, 2020 by Cyrus Mehta*

I have received inquiries from lawful permanent residents, or green card holders, who are outside the United States and have been unable to return to the United States in the COVID-19 period. They are unable to return either because there are no flights out of the country to the US or they feel vulnerable to contracting the infection or they may have unfortunately contracted the infection.

These green card holders are understandably concerned as their inability to return to the US is due to no fault of their own. If a lawful permanent resident is unable to return to the US within a year, the green card [technically becomes invalid for reentry](#) to the US. This does not mean that the person ceases to be a lawful permanent resident, and it can still be asserted that [lawful permanent residence has not been abandoned](#).

Similarly, a [reentry permit](#) allows a green card holder to remain outside the US for two years. One who is outside the US with a reentry permit must return back prior to the expiration of the reentry permit. Otherwise, if the person remains outside the US beyond the date of the reentry permit, the reentry permit is technically invalid as a travel document, although the person can still claim to be a lawful permanent resident.

Green card holders stuck outside the US have to also be mindful about their eligibility for naturalization. The eligible applicant must have at least 2.5 years of [physical presence](#) in the US in the past 5 years prior to filing the application. If the applicant has been married to a US citizen for 3 years, then the eligible applicant must have 1.5 years of physical presence in the US. Spouses and children who obtained lawful permanent residence as a result of being subject to extreme cruelty by a US citizen are also allowed to apply for naturalization

after 3 years. Furthermore, the applicant must be continuously residing in the US during the relevant 5 or 3 year period. An applicant who has been outside the US for more than six months is deemed to have [broken continuity of residence](#). This presumption of breaking continuous residence can be rebutted if the applicant can show that the applicant did not terminate his or her employment in the United States or obtain employment while abroad; the applicant's immediate family members remained in the United States; and the applicant retained full access to or continued to own or lease a home in the United States.

Below are my brief answers to Frequently Asked Questions (FAQ) by concerned green card holders during the COVID-19 crisis.

**1. I am unable to return to the US as all flights have been cancelled in my country. Will I have any problems if I return to the US in excess of 180 days from my last departure?**

If a green card holder seeks admission to the US after being outside for more than 180 days, he or she will again be considered as an applicant seeking admission into the US under INA 101(a)(13)(C)(ii). While you may be subject to more scrutiny at the port of entry as an applicant seeking admission, you will likely not be denied admission for abandoning permanent residency especially if the reason for not travelling back within 180 days was due to COVID-19 restrictions. Regardless of whether you are returning within or in excess of 180 days, there may be other grounds under which you will be treated as an applicant for admission pursuant to INA 101(a)(13)(C).

**2. I am unable to return to the US as all flights have been cancelled in my country. Will I have any problems if I return to the US in excess of 1 year from my last departure?**

The green card (Form I-551) is technically invalid for reentry into the US if you have spent in excess of 1 year outside the US from your last departure. If your reason for not coming back was related to COVID-19, you should apply for a [Returning Resident \(SB-1\) Visa](#) at the US Consulate as soon as it reopens to the public and explain that your inability to return was due to circumstances beyond your control. You must still demonstrate that you never abandoned permanent residence by demonstrating that you are returning from a temporary visit abroad, continued to maintain ties with the US and that you always harbored an intention to resume permanent residency.

The Ninth Circuit's interpretation in [Singh v. Reno](#), 113 F.3d 1512 (9th Cir. 1997) of what constitutes a temporary visit abroad is generally followed:

A trip is a temporary visit abroad if (a) it is for a relatively short period, fixed by some early event; or (b) the trip will terminate upon the occurrence of an event that has a reasonable possibility of occurring within a relatively short period of time. If as in (b) the length of the visit is contingent upon the occurrence of an event and is not fixed in time and if the event does not occur within a relatively short period of time, the visit will be considered a "temporary visit abroad" only if the alien has a continuous, uninterrupted intention to return to the United States during the visit.

### **3. What if the US Consulate refused the SB-1 Visa, or has not resumed operations soon enough, and I have spent in excess of 1 year overseas from my last departure?**

If your green card (Form I-551) has not expired, you may wish to travel directly to the US and assert at the port of entry that you never abandoned permanent residency. While this is more risky than applying for an SB-1 visa, the Customs and Border Protection official has discretion to waive you into the US even without a technically valid I-551. The CBP official may ask you to complete [Form I-193, Application for Waiver of Passport and/or Visa](#) and pay the requisite filing fee. In the event that the CBP official does not waive you into the US, as a lawful permanent resident you have the right to have an Immigration Judge review your claim, and the burden of proof is on the government through clear and convincing evidence that you abandoned permanent residency.

### **4. As a result of being unable to travel back to the US, I have gone beyond the expiration date of my reentry permit?**

My responses to Questions 2 and 3 are equally applicable to one who has stayed beyond the expiration date of the reentry permit.

### **5. Can I attempt to renew the reentry permit while stuck overseas?**

No. You can only apply for a reentry permit while you are physically in the US.

### **6. How will my being stuck outside the US in excess of 180 days but less than 1 year impact my ability to naturalize?**

You have to demonstrate that you have been physically present in the US for half of the relevant period – 5 years or 3 years (if married to a US citizen for 3

years) - preceding the filing of the N-400 application. In other words, you must demonstrate that you have physically spent at least half of 5 or 3 years in the US. Each day you spend outside the US may erase the time you have already accumulated until you get readmitted into the US and gain more days. Of course, if you have already accumulated days that exceed the threshold, you would still have sufficient time to spare.

If you are on the cusp, and will likely have less than half of the required time of physical presence in the US because of your forced stay outside the US, then you may wish to consider filing the N-400 application from overseas in order to lock in the required physical presence.

If you meet the physical presence test, you have to also demonstrate that you did not break continuity of residence, and so remaining outside the US in excess of six months will lead to a rebuttable presumption that you broke continuous residence. Under current law, one can rebut the presumption by demonstrating that you did not move your residence or seek employment overseas, or your immediate family members remained in the US. There is no accommodation in the existing rules regarding remaining outside the US due to circumstances beyond your control. Still, an applicant is nevertheless encouraged to use a COVID-19 related ground to also rebut the presumption of breaking continuity of residence.

### **7. How will my being stuck outside the US in excess of 1 year impact my ability to naturalize?**

Unfortunately, whatever physical presence that was accumulated will be erased, and you will need to wait 4 years and 1 day before you can file Form N-400 again, provided you have the requisite physical presence as discussed above, and you have also been continuously residing during the relevant period. The USCIS Policy Manual [suggests](#) that an applicant apply after 4 years and 6 months to avoid the presumption of a break in continuity of residence.

### **8. Are there any exceptions if I am unable to meet the requirements of naturalization if I am stranded overseas?**

Yes. Spouses of US citizens who are employed abroad for certain organizations may not need to meet the physical presence of residence requirement. Most people who avail of this exception are spouses of US citizens working for an American corporation or its subsidiary abroad that is engaged in the

development of foreign trade or commerce of the US, but see [Chapter 4 – Spouses of US Citizens Employed Abroad of the USCIS Policy Manual](#) for further details and other exceptions.

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