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Immigration Magazine

Permanent or long-term residency in the U.S. does not mean “permanent”, even for those with U.S. citizen spouse/child(ren), I-131 advance parole/re-entry permit, and/or green card!

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Prior to traveling internationally or submitting United States (U.S.) immigration applications, foreign nationals or non-U.S.-citizens (including green card holders) with certain histories should have their immigration backgrounds analyzed and evaluated thoroughly, and/or their immigration applications properly prepared.

These certain histories include, but are not limited to: (a) the commission of certain crime, or even possible commission of misrepresentation/fraud to obtain or attempt to obtain immigration benefits in or to the U.S.; (b) certain medical conditions; (c) certain period(s) of illegal presence in the U.S.; (d) abandonment (intentional/unintentional); and/or (e) certain removal/deportation experience with the U.S. immigration law.

For example, many non-U.S.-citizens and their U.S. citizen families, often times, encountered harrowing experiences when they learned, for the first time, that the non-U.S.-citizen family members are prohibited for a proscribed period (such as 3 years, 5 years, or 10 years) from entering or re-entering the U.S.; or are being removed/deported, or charged with removal/deportation, from the U.S. To the surprise of many, this may be so even if the non-U.S.-citizen has U.S. citizen spouse/child(ren), grew up in the U.S., and/or even has a green card.

For foreign nationals or non-U.S.-citizens who are already stranded abroad as a result of the time bar, the process and wait-time for applying for a waiver, such as an I-601 extreme hardship waiver (I-601 waiver), are complex, lengthy and extremely stressful to both the non-citizens, and their aggrieved family members in the U.S. This is because the adjudication and grant of a waiver such as an I-601 waiver are inherently highly discretionary; and the wait-time for an I-601 waiver immigration adjudication office varies widely, from 6 months to 1 year. Certain adjudication offices can take several years to adjudicate an I-601 waiver while an extremely small number of

adjudication offices may only take several days to several weeks.

As a result, family separation is often lengthy and uncertain, and for the unfortunate ones, permanent.

A. At present, for example, certain foreign nationals (non-green card holders) who have been illegally present in the U.S. for more than 180 days or one year; and have either departed the U.S. or have previously departed and re-entered the U.S. without the appropriate waiver, within the proscribed/prohibited period of time bar of either 3 years or 10 years, respectively, will need an I-601 extreme hardship waiver (“I-601 waiver”) if they are to be allowed to return to or remain in the U.S.

This 3-year/10-year bar also applies to foreign nationals with pending green card cases who traveled or are traveling on I-131 advance paroles, if they have been illegally present in the U.S. for more than 180 days or one year, respectively.

B. For example, under certain circumstances, to the surprise of many, even green card holders or lawful permanent residents (even for those who have lived in the U.S. for most of their lives), may experience the following:

- (i) Under certain circumstances, green card holders may need an I-601 waiver if they are to be allowed to remain in or return to the U.S.; or
- (ii) Under certain circumstances, green card holders may be considered to have abandoned their green card status (intentionally or even unintentionally) which include, but are not limited to, prolonged or frequent absences from the U.S., or working abroad. Having a re-entry permit will not necessarily prevent a finding of abandonment of green card status; or
- (iii) Moreover, revocation of green card status may occur such as if there is a finding of fraud, misrepresentation or initial ineligibility.

C. For example, foreign nationals or non-U.S.-citizens (including green card holders) with certain criminal histories may need an I-601 waiver if they are to be allowed to enter, return to or remain in the U.S.

D. For instance, certain foreign nationals who have removal/deportation orders may need an I-212 waiver if they are to be allowed to return to the U.S.

E. Similarly, some foreign nationals or non-U.S.-citizens (including green card holders) with U.S. immigration applications previously denied, or even approved, under limited situations may, years later, discover that they need an I-601 waiver.

By Aik Wan Kok, Attorney at Law, at Tiya PLC; Tel: 202-506-9767
www.tiyaimmigration.com ; <http://tiyalaw.blogspot.com> ;
www.immigrationresource.net

We represent employers, and individuals and their families in green card and work visa matters in U.S. immigration law. We represent clients within the U.S. and abroad.

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