

## **9 FAM 42.22 NOTES**

*(CT:VISA-1858; 08-15-2012)  
(Office of Origin: CA/VO/L/R)*

### **9 FAM 42.22 N1 APPLICATION FOR AND CONSULAR ADJUDICATION OF RETURNING RESIDENT (SB) STATUS**

*(CT:VISA-1557; 09-30-2010)*

- a. Lawful permanent resident (LPR) aliens who are unable to return to the United States within the travel validity of their Form I-551, Permanent Resident Card, or Reentry permit may apply at a U.S. Embassy or Consulate for a special immigrant Returning Resident (SB-1) visa.
- b. An applicant seeking a special immigrant Returning Resident (SB-1) visa must complete Form DS-117, Application to Determine Returning Resident Status.
- c. The applicant should file Form DS-117 and supporting documentation at the post in the consular district in which he or she currently resides. You may not deny an applicant processing at post solely because your post does not process immigrant visas (IV). However, mission consular management may develop specific processing policies where circumstances would prevent effective evaluation and adjudication of the application at certain posts in country, in which case you may direct the applicant to another post in country that can handle the application. (See 9 FAM 42.61 Notes.)
- d. You must conduct a personal interview with the applicant to determine whether the application for Returning Resident status is approvable. A consular manager must review your adjudication and indicate their concurrence or non-concurrence on Form DS-117.
- e. If you determine that the applicant has provided sufficient justification and evidence in accordance with 9 FAM 42.22 N1.1 - N1.7, mark Form DS-117 as approved, open a case in Immigrant Visa Overseas (IVO), and scan in the approved Form DS-117 and supporting documents.
- f. If you adjudicated the application at a post where immigrant visas (IVs) are not processed, you must send approved Form DS-117 and the supporting documents to the IV-processing post for case creation and scanning.
- g. If the application is denied, you should enter an "L" Lookout in INK containing scanned copies of Form DS-117 and all supporting documents, and also enter notes supporting the denial decision.

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- h. Paper copies of the denied Form DS-117 and all supporting documents may be destroyed after adjudication and scanning.
- i. Approved applicants will proceed with an application for an SB-1 IV. SB-1 interview appointment scheduling will vary based on post's intake procedures. Each post should develop standard operating and intake procedures in order to handle SB-1 cases efficiently. SB-1 applicants are subject to the same application processing fees and security surcharges, documentary requirements, medical examination, and administrative processing that apply to all IV cases.

## **9 FAM 42.22 N1.1 Lawful Permanent Resident (LPR) Who Was Outside the United States for One Year or More**

*(CT:VISA-1858; 08-15-2012)*

A lawful permanent resident (LPR) who has remained outside the United States for more than one year may be eligible for returning resident status if the consular officer is satisfied that:

- (1) The alien departed the United States with the intention of returning to an unrelinquished residence; and*
- (2) The alien's stay abroad was for reasons beyond the alien's control and for which the alien was not responsible.*

## **9 FAM 42.22 N1.2 Evidence of Intent to Return to Unrelinquished Residence in the United States**

*(CT:VISA-1858; 08-15-2012)*

*To qualify as a returning resident alien, an individual must present evidence that he or she:*

- (1) Was a lawfully admitted permanent resident of the United States at the time of departure;*
- (2) At the time of departure, had the intention of returning to the United States;*
- (3) While residing abroad, did not abandon the intention to return to the United States; and*
- (4) Is returning from a temporary residence abroad; or if the stay was protracted, this was caused by reasons beyond the alien's control.*

## **9 FAM 42.22 N1.3 Documentary Evidence of Continued U.S. Residence**

*(CT:VISA-1858; 08-15-2012)*

Documentary evidence of an alien's intent to maintain a U.S. residence may consist of, but is not limited to, the following:

- (1) A driver's license issued within the past year and reflecting the same address as that recorded on the Form I-94, Arrival and Departure Record;
- (2) The name and address of the U.S. employer and evidence that a salary has been paid within a reasonable period of time;
- (3) Evidence of children's enrollment in a U.S. school;
- (4) Evidence that extended visit abroad was caused by unforeseen circumstances;
- (5) Evidence of a predetermined termination date; i.e., graduation, employment contract expiration, etc.;
- (6) Evidence of having filed U.S. income tax return(s) for the past year(s); *or*
- (7) Evidence of property ownership, whether real or personal, in the United States.

## **9 FAM 42.22 N1.4 Evidence Indicating Abandonment of Residence**

*(CT:VISA-1377; 11-24-2009)*

You should also take into account evidence that indicates abandonment of residence in the United States. Such evidence might consist of the following:

- (1) Extended or frequent absences from the United States;
- (2) Disposition of property or business affiliations in the United States;
- (3) Family, property, or business ties abroad;
- (4) Conduct while outside the United States such as, employment by a foreign employer, voting in foreign elections, running for political office in a foreign country, etc.; or
- (5) Failure to file U.S. income tax returns.

## **9 FAM 42.22 N1.5 Defining Temporary**

*(CT:VISA-1377; 11-24-2009)*

The term "temporary" cannot be defined in terms of elapsed time alone. The intent of the alien, when it can be determined, will control. In *Matter of Kane*, the

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Board of Immigration Appeals has described some of the elements to be examined:

- (1) Reason for Absence: Traveler should have a definite reason for traveling abroad temporarily;
- (2) Termination Date: The visit abroad should be expected to terminate within a relatively short period, fixed by some early event; and
- (3) Place of Home or Employment: The applicant must expect to return to the United States as an actual home or place of employment. He or she must possess the requisite intent to do so at the time of their departure, and maintain it during the course of their sojourn.

## **9 FAM 42.22 N1.6 Defining "Lawfully Admitted"**

*(CT:VISA-1377; 11-24-2009)*

The INA defines "lawfully admitted for permanent residence" to mean "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed."

## **9 FAM 42.23 N1.7 Verification of Lawful Permanent Resident (LPR) Status**

*(CT:VISA-1377; 11-24-2009)*

Before making a final determination on an SB-1 returning resident application, you must verify that the alien was granted LPR status by requesting verification from the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS) office in your region. The verification request should explain that the alien has requested processing for a returning resident visa, but lacks proof of LPR status. DHS USCIS will run a check through their Central Index System (CIS), Image Storage and Retrieval System (ISRS) (or its successor BSS), and TECS/IBIS systems to ensure that the subject was in fact a LPR of the United States.

## **9 FAM 42.22 N1.8 Derogatory Information Concerning SB-1 Applicant**

*(CT:VISA-1377; 11-24-2009)*

If post has any adverse information it should be forwarded to the DHS USCIS office that is also conducting the required LPR status verification checks. You may also request that DHS USCIS enter a TECS lookout on the subject. Determinations regarding the relevance of such information to admissibility will be made by DHS Customs and Border Protection (CBP) during inspection.

## **9 FAM 42.22 N1.9 Former U.S. Citizen**

*(CT:VISA-1377; 11-24-2009)*

If a naturalized citizen of the United States loses citizenship while in the United States, the status of a returning resident is appropriate if the alien:

- (1) Was a permanent resident of the United States prior to naturalization;
- (2) Has taken no action causing loss of permanent resident status;
- (3) Departed the United States after losing citizenship; and
- (4) Is returning to the United States after a temporary visit abroad.

## **9 FAM 42.22 N1.10 Alien Employed Abroad by U.S. Employer**

*(CT:VISA-1377; 11-24-2009)*

In the absence of contrary evidence, an alien employed outside the United States by a U.S. employer would not likely be considered to have abandoned U.S. residence. Although an alien who lives and works in a foreign country, but merely returns to the United States for brief visits periodically may still be found to have abandoned LPR status. Annual visits to the United States are no guarantee that LPR status will be preserved.

## **9 FAM 42.22 N1.11 Religious Missionaries Abroad**

*(CT:VISA-1377; 11-24-2009)*

When dealing with extended absences from the United States, consular officers must be aware that the DHS has determined that performance of missionary work abroad for a "recognized" U.S. religious denomination does not interrupt LPR status.

## **9 FAM 42.22 N1.12 Lawful Permanent Resident (LPR) Students Studying Abroad**

*(CT:VISA-1377; 11-24-2009)*

Several decisions by the DHS Administrative Appeals Office (AAO) relate to LPR students studying abroad. Students who wish to retain LPR status should present evidence of a definitive graduation date. Even prolonged absences from the United States may be considered temporary if the LPR can present evidence of a receipt of a degree within a definitive time. Consular officers should take into account whether students return to the United States at the end of each academic term, or whether they have family still living in the United States. Evidence of property ownership, or a bank account in the United States, may indicate the student intends to return to the United States upon completion of studies.

## 9 FAM 42.22 N2 RETURNING RESIDENT ALIENS NOT REQUIRING VISA

*(CT:VISA-1858; 08-15-2012)*

A lawful permanent resident (LPR) returning to an unrelinquished domicile in the United States may not require a visa if the alien:

- (1) Possesses a valid Form I-551, Permanent Resident Card, and was absent from the United States for less than one year;
- (2) Possesses an expired Form I-551 (valid for 10 years) if the expiration date is the only reason for not boarding the alien;
- (3) Possesses an expired Form I-551, accompanied by a filing receipt issued within the previous six months for a Form I-751, Petition to Remove the Conditions on Residence, or Form I-829, Petition by Entrepreneur to Remove Conditions, if seeking admission or readmission after a temporary absence of less than one year;
- (4) Possesses a valid or expired Form I-551, and is a civilian or military employee of the U.S. Government and was outside the United States pursuant to official orders, or the spouse or child of such alien who has resided with such alien abroad; provided the spouse or child fulfills the requirements of 9 FAM 42.22 N4; or
- (5) Possesses Form I-551, valid or expired, or a transportation letter, and is an employee of the American University of Beirut who is returning to a permanent residence in the United States after temporary employment with the University; *or*
- (6) The lawful permanent resident (LPR) is an alien commuter residing and employed in contiguous territory.

### 9 FAM 42.22 N2.1 Lawful Permanent Resident (LPR) Possessing a Form I-551, Permanent Resident Card

*(CT:VISA-1858; 08-15-2012)*

- a. An alien in possession of a Form I-551, Permanent Resident Card, who is returning to an unrelinquished residence in the United States after a temporary absence of less than one year, does not require a visa. (See also 8 CFR 211.1(b)(3) which provides that the individual can apply at the point of entry (POE) for a waiver of the requirement to have a Form I-551.)
- b. An alien in possession of an expired Form I-551 valid for 10 years may board an aircraft going to the United States if the expiration date is the only reason for not boarding the alien. However, post must issue a transportation letter, otherwise CBP *may* impose fines against the carrier for transporting the alien.
- c. However, an alien in possession of an expired permanent resident card with a

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two-year expiration date must continue to have evidence that the Form I-551 expiration date has been extended.

## **9 FAM 42.22 N2.2 Lawful Permanent Resident (LPR) Possessing Form I-327, Permit to Reenter the United States**

*(CT:VISA-1557; 09-30-2010)*

- a. An alien in possession of a valid reentry permit, Form I-327, does not require a visa to reenter the United States. In the absence of contrary evidence, the Department presumes that application for a reentry permit prior to departure is prima facie evidence of intent to retain LPR status. However, failure to obtain a reentry permit should not be viewed automatically as intent to abandon residence and LPR status. A reentry permit, unless otherwise restricted, is valid for a maximum of two years and cannot be renewed. An alien cannot apply for a reentry permit outside the United States.
- b. Although two years is the maximum period for which a reentry permit is valid, there is no requirement that an application for a returning resident visa be submitted within two years of the alien's departure. It may be that Congress limited the maximum validity of the reentry permit to two years in the belief that the evaluation of the alien's continued intention to return could, after a two-year absence, best be made abroad, through a consular interview.

## **9 FAM 42.22 N2.3 Alien Commuters**

*(CT:VISA-1858; 08-15-2012)*

An alien lawfully admitted for permanent residence may continue to reside in foreign contiguous territory and commute as a special immigrant defined under INA 101(a)(27)(A) to his or her place of employment in the United States. An alien commuter who has been out of regular employment in the United States for a continuous period of six months *will* be deemed to have lost residence status, notwithstanding temporary entries in the interim for other than employment purposes. However, an exception applies when employment in the United States was interrupted for reasons beyond the alien's control other than lack of a job opportunity or the commuter can demonstrate that he or she has worked 90 days in the United States in the aggregate during the 12-month period preceding the application for admission into the United States.

## **9 FAM 42.22 N2.4 Alien Member of U.S. Armed Forces or U.S. Government Employee**

*(CT:VISA-1377; 11-24-2009)*

- a. An alien member of the U.S. Armed Forces or a U.S. Government employee



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may present Form I-551, Permanent Resident Card, in lieu of a visa provided the alien is:

- (1) Traveling on U.S. Government orders; and
  - (2) Returning from a foreign assignment to an unrelinquished residence.
- b. The spouse or child of a U.S. Armed Forces member or U.S. Government employee does not require a visa if the spouse or child:
- (1) Resided abroad with the spouse while on duty;
  - (2) Is preceding, accompanying, or following-to-join the principal alien; or
  - (3) Married the U.S. Armed Forces member or U.S. Government employee while abroad.

## **9 FAM 42.22 N2.5 Lawful Permanent Resident (LPR) Commuting From Canada or Mexico**

*(CT:VISA-1377; 11-24-2009)*

An alien who has been lawfully admitted for permanent residence may commence or continue to reside in foreign contiguous territory. The alien must present a valid Form I-551, Permanent Resident Card, in lieu of an immigrant visa (IV) and passport. Such alien may commute as a special immigrant, as defined in INA 101(a)(27)(A), to the alien's place of employment in the United States to engage in daily or seasonal work which, on the whole, is regular and stable. (See DHS regulations at 8 CFR 211.5.)

## **9 FAM 42.22 N3 DETERMINING LOSS OF LAWFUL PERMANENT RESIDENT (LPR) STATUS**

### **9 FAM 42.22 N3.1 Loss by Renunciation**

*(CT:VISA-1377; 11-24-2009)*

- a. DHS reserves the right to determine loss or retention of lawful resident status. Consular officers are not authorized to make such determinations. However, in a case in which the applicant has abandoned residence and voluntarily surrenders the Form I-551, Permanent Resident Card, you should request that the applicant complete the Form I-407, Abandonment of Lawful Permanent Resident Status, and accept the alien's permanent resident card and return the card to DHS. You may not require a visa applicant to relinquish the Form I-551 as a condition to issuance of either an IV or NIV.
- b. You should keep in mind it is not the statement renouncing residence, but the absence of a fixed intent to return, that results in the loss of LPR status.



## **9 FAM 42.22 N3.2 Alien Relinquishment of Form I-551, Permanent Resident Card**

*(CT:VISA-1858; 08-15-2012)*

When an alien willingly surrenders the Form I-551, Permanent Resident Card, the consular officer *must* ask the alien to complete Form I-407, Abandonment of Lawful Permanent Resident Status. The consular officer *then accepts* the card and *returns* it, with the Form I-407, to the USCIS Texas Service Center at the address below with an attached cover memo that includes an explanatory statement. USCIS will transmit the Form I-407 and cover memo to the relevant district office for review and inclusion in the alien's immigration file. The Form I-407 is only for the relinquishment of LPR status, not for expired cards of LPRs who intend to keep their status.

USCIS TSC  
P.O. Box 850965  
Mesquite, TX 75185-0965

## **9 FAM 42.22 N3.3 Loss by Recision**

*(CT:VISA-1377; 11-24-2009)*

Within five years of an alien's adjustment of status, DHS may rescind an adjustment of status if it is later determined that the alien was ineligible. In such cases, intent is not the issue, it is a question of statutory eligibility.

## **9 FAM 42.22 N3.4 Loss Due to Deportation**

*(CT:VISA-1377; 11-24-2009)*

The Board of Immigrations Appeals (BIA) has held that LPR status ends with the entry of a final administrative order of deportation. Intent in such cases is not the issue; the loss of status occurs by operation of law.

## **9 FAM 42.22 N3.5 Loss by Removal**

*(CT:VISA-1377; 11-24-2009)*

Removal ends an alien's LPR status. Removal is the process by which an alien is removed from the United States at U.S. Government expense. Removal is the equivalent of deportation.

## **9 FAM 42.22 N3.6 Loss Due to Exclusion**

*(CT:VISA-1858; 08-15-2012)*

An LPR status is terminated by the entry of a final administrative order of exclusion. As with deportation (see 9 FAM 42.22 N3.4 above) operation of law, not intent, controls in this case.

## **9 FAM 42.22 N3.7 Loss by Reversion**

*(CT:VISA-1377; 11-24-2009)*

Reversion terminates LPR status. Reversion is the process whereby an LPR can be adjusted to the status of a nonimmigrant to A, E, or G status. The LPR can prevent reversion by waiving all the rights and benefits of the nonimmigrant status. In such instances, DHS is without discretion and must effect a reversion when the alien fails to exercise action to contest the reversion. Thus, reversion is a change in LPR status that may be viewed as primarily driven by the operation of law. However, the alien's intent is important, because the alien can always prevent reversion by executing the statutory waiver of rights.

## **9 FAM 42.22 N4 CONDITIONAL RESIDENT STATUS**

### **9 FAM 42.22 N4.1 Conditional Lawful Permanent Resident (LPR) Status**

*(CT:VISA-1377; 11-24-2009)*

- a. An alien granted conditional resident status under INA 216 is issued a Form I-551, Permanent Resident Card, similar to other permanent residents, except that the classification code on the front (photo) side of the card is "CR-", "CF-", "C1-", or "C4-", followed by a one digit number and the reverse side bears a legend stating:

THIS CARD EXPIRES \_\_\_\_\_

The expiration date is two years from the date the alien obtains lawful permanent resident status. The card is valid until midnight of the date indicated.

- b. An alien may not use an expired Conditional Resident Form I-551, except when presented with a computer-generated receipt issued by DHS USCIS indicating that the applicant has applied for removal of conditional status or been granted a waiver.

### **9 FAM 42.22 N4.2 Automatic Loss of Conditional Lawful**

## **Permanent Resident (LPR) Status**

*(CT:VISA-1377; 11-24-2009)*

A conditional resident alien automatically loses LPR status on the second anniversary of his or her date of admission as a resident if the Form I-751, Petition to Remove the Conditions of Residence, is not filed by that date. However, the law allows DHS to accept a late petition if, and only if, the alien can establish that the failure to file on time was for reasons beyond his or her control.

## **9 FAM 42.22 N4.3 Transportation Letter for Conditional Resident with Expired Conditional Form I-551, Conditional Resident Card**

*(CT:VISA-1858; 08-15-2012)*

You may issue a transportation letter to a conditional resident with an expired conditional Form I-551, Permanent Resident Card if:

- (1) The alien is also in possession of their expired Form I-551 and a Form I-797 receipt issued by DHS showing that he or she has filed a(n):
  - (a) Form I-751, Petition to Remove the Conditions of Residence; or Application for a waiver of the requirement to file a joint petition.
  - (b) In these cases, consider the Form I-551, Permanent Resident Card, valid for six additional months from the date of such filing while the petition or application is pending before DHS.
- (2) You contact the USCIS office in your region and receive confirmation of the applicant's conditional lawful permanent resident status and proof of Form I-797 indicating that he or she has filed a Form I-751 or Application for a waiver of the requirement to file a joint petition.
  - (a) The verification request should explain that the alien has requested a transportation letter due to an expired conditional resident card.
  - (b) DHS USCIS will run a check through their Central Index System (CIS), CLAIMS, Image Storage and Retrieval System (ISRS) (or its successor BSS), and TECS/IBIS systems to ensure that the subject was in fact a conditional resident and did file a Form I-751.
  - (c) If post has any adverse information it should be forwarded to the DHS USCIS office that is also conducting the required status verification checks. You may also request that DHS USCIS enter a TECS lookout on the subject. Determinations regarding the relevance of such information to admissibility will be made by DHS CBP during inspection.
- (3) You are reasonably satisfied that the marriage appears to be valid on the surface.

## **9 FAM 42.22 N4.4 Conditional Resident with Expired Conditional Form I-551 and No Form I-797 Indicating That He or She Filed a Form I-751**

*(CT:VISA-1377; 11-24-2009)*

- a. If an alien's conditional resident status has expired and the alien does not have proof of having filed a Form I-751 with USCIS, then the consular officer may only issue a transportation letter if:
  - (1) You contact the USCIS office in your region and they verify that the applicant has already filed a Form I-751, they are in conditional resident status, and you are reasonably convinced that the relationship appears to be valid on the surface; or
  - (2) The applicant can file the Form I-751 and provide receipt within 90 days of card expiration, provide you with the Form I-797 receipt, you confirm conditional status with USCIS Regional Office, and you are reasonably convinced that the relationship appears to be valid on the surface.
- b. If applicant presents expired card beyond the 90 day grace period, then you do not have the authority to issue a transportation letter. Inform the applicant that the petitioner must file a Form I-130, Petition for Alien Relative, and initiate the immigrant visa (IV) process.

## **9 FAM 42.22 N4.5 Advising the Conditional Resident That Permission to Enter the United States Rests with DHS**

*(CT:VISA-1377; 11-24-2009)*

In addition you should advise the alien that:

- (1) The decision to grant or deny the request to excuse the late filing of Form I-751, Petition to Remove the Conditions of Residence, rests with the DHS adjudicating officer;
- (2) Even if the tardiness is excused, DHS may still deny the petition for other reasons;
- (3) If the tardiness is not excused and the petition or application approved, the alien will be required to depart from the United States or appear before an immigration judge in exclusion proceedings;
- (4) If the alien is excluded and deported from the United States, the alien will not be allowed to return to the United States for one year, unless permission to return is granted; and
- (5) That the alien may wish to apply for a new immigrant visa (IV) rather than accept the risks inherent in filing a tardy petition or application while in a

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deferred inspection status. The alien may also seek a new immigrant visa (IV) if he or she departs voluntarily following a denial of the petition or application or, if excluded and deported, once the excludability under INA 212(a)(6)(A) has been resolved.

## **9 FAM 42.22 N5 CHILD UNDER THE AGE OF 16 YEARS**

*(CT:VISA-1377; 11-24-2009)*

- a. An alien child under the age of 16 years is not considered to possess a will or intent separate from that of the parents with regard to a protracted stay abroad. Accordingly, the residence of a child under 16 follows that of the parent(s) unless you conclude that the parents have a separate intention for the child to return to the United States for residence.
- b. In a particular illustrative case of protracted stay abroad by a child, an alien, born in Bermuda in 1941, was formally adopted at the age of six months. The adoptive mother and child were admitted for permanent residence in 1949 but approximately 10 months later the child was returned to Bermuda because the adoptive mother reportedly was unable to care for the child properly and work at the same time. The child remained in Bermuda for six years, most of the time in the custody of a guardian. The adoptive mother in the United States contributed regularly to the child's support but never visited the child. When nearly 14 years of age, the child applied for a special immigrant visa (IV) as a returning resident alien under INA 101(a)(27)(A). The Department determined that the child's protracted stay abroad was for reasons beyond the alien's control (see 22 CFR 42.22(a)(3)) and, therefore, had not affected the child's status as an alien lawfully admitted for permanent residence.
- c. In the case of LPR children who you believe spend more than one year outside the United States as a result of an abduction by a non-custodial parent, please contact Overseas Citizen's Services, Office of Children's Issues (CA/OCS/CI) and the Post Liaison Division (CA/VO/F/P) to determine the proper course of action. While a returning resident visa is the preferred way for the child to return to the United States and be admitted in the proper status, a non-custodial parent may not be willing to cooperate in order to complete the returning resident visa process. CA/OCS/CI, CA/VO/F/P, and CA/VO/L/A can advise you on options in coordination with DHS to allow the child to travel back to the United States.

## **9 FAM 42.22 N6 CHILD BORN IN THE UNITED STATES TO DIPLOMATIC PARENTS**

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*(CT:VISA-1377; 11-24-2009)*

A child born in the United States to parents in diplomatic status does not acquire U.S. nationality at birth, because the parents are not subject to the jurisdiction of the United States while in that status. (See case of *Nikoi v. Attorney General of United States*, 939 F.2d 1065, D.C. Circuit.) However, in accordance with DHS regulation 8 CFR 101.3(a)(1), such a child might be considered a lawful permanent resident at birth. The child will normally be considered while under the age of 16 to have the same intent as the parents. Thus, if the parents take the child out of the United States and abandon their residence in the United States, the child will normally be considered to have lost permanent residence status.

## **9 FAM 42.22 N7 CHILD OF LAWFUL PERMANENT RESIDENT (LPR)**

*(CT:VISA-1377; 11-24-2009)*

See 22 CFR 42.1(e).

## **9 FAM 42.22 N8 BENEFICIARIES OF PRIVATE LAWS**

### **9 FAM 42.22 N8.1 Beneficiary of Private Law**

*(CT:VISA-1858; 08-15-2012)*

Beneficiaries of private legislation granting permanent resident status are considered eligible for special immigrant status as returning resident aliens under the provisions of INA 101(a)(27)(A) even though they may have been abroad at the time the legislation was enacted. The spouse and children of such aliens *may* also benefit.

### **9 FAM 42.22 N8.2 Beneficiaries of Private Law 98-53: American University of Beirut (AUB) Employees**

*(CT:VISA-1858; 08-15-2012)*

- a. A lawful permanent resident alien employed by the AUB may present a Form I-551, Permanent Resident Card, or a boarding letter issued by a U.S. consular or DHS officer, in lieu of an immigrant visa (IV), provided the alien:
- (1) Presents evidence of LPR status;
  - (2) Presents proof of AUB employment;
  - (3) Was employed by the AUB immediately prior to traveling to the United

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States;

- (4) Seeks admission either to remain temporarily in the United States and then resume employment with the AUB; or
  - (5) Intends to resume permanent residence in the United States.
- b. If you are reasonably satisfied that the alien is entitled to status, the consular officer *may* issue the boarding letter.

## **9 FAM 42.22 N9 APPLYING INA 316 AND 317**

*(CT:VISA-1377; 11-24-2009)*

INA 316(b) and (c) and INA 317 provide that in certain cases, as described below, continuous absence from the United States does not break the continuity of residence for naturalization purposes. It would be inconsistent to permit time spent abroad in such circumstances to be applied for residence for naturalization purposes but to interpret that same time abroad as interruptive for the purpose of retaining LPR status. Thus, an alien's qualification for the benefits of INA 316(b) or (c), or INA 317 may be considered prima facie evidence that the alien is entitled to the status of a returning resident alien as contemplated in INA 101(a)(27)(A).

The cases are:

- (1) An employee under contract with the U.S. Government or a U.S. institution of research recognized by the Secretary of Homeland Security (see 8 CFR 316.20);
- (2) An employee of a U.S. firm or corporation engaged in the development of foreign trade and commerce of the United States or a subsidiary thereof, more than 50 percent of whose stock is owned by an U.S. firm or corporation;
- (3) An employee of a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence;
- (4) Any person authorized to perform the ministerial or priestly function of a religious denomination having a bona fide organization within the United States; or
- (5) Any person engaged solely by a religious denomination or interdenominational mission organization having a bona fide organization within the United States as a missionary, brother, nun, or sister.

## **9 FAM 42.22 N10 VISITOR VISA ISSUANCE NOT RELINQUISHMENT OF RESIDENT STATUS**



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*(CT:VISA-1858; 08-15-2012)*

- a. An alien is not ineligible for classification as a returning resident alien solely because the alien was previously issued a visitor visa during a stay abroad as a matter of convenience when time did not permit the alien to obtain a returning resident visa. (See 9 FAM 41.31 N15.)
- b. For example, a permanent resident alien is temporarily assigned abroad but employed by a U.S. corporation. The alien has been outside the United States for more than one year and thus may not return to the United States using the Form I-551, Permanent Resident Card. The alien has never relinquished permanent residence in the United States; has continued to pay U.S. income taxes; and perhaps even maintains a home in the United States. The fact that the alien was issued a nonimmigrant visa (NIV) for the purpose of making an urgent business trip would not reflect negatively on the retention of resident status.
- c. *Visa applicants are not required* to relinquish the Form I-551, as a condition to immigrant or nonimmigrant visa (NIV) issuance.

## **9 FAM 42.22 N11 DOCUMENTATION REQUIRED UNDER INA 222(B)**

*(CT:VISA-1377; 11-24-2009)*

Under the provisions of 22 CFR 42.22(b), a returning resident alien is required to present records and documents required by INA 222(b) only for the period of temporary residence outside the United States. You should not require a police certificate or other documents for periods of less than six months.

## **9 FAM 42.22 N12 SEIZING FRAUDULENT DEPARTMENT OF HOMELAND SECURITY (DHS) DOCUMENTS**

*(CT:VISA-1858; 08-15-2012)*

- a. Posts should keep in mind that consular officers do not have the authority to make determinations regarding retention or loss of lawful resident status and *cannot* require any alien to relinquish lawful resident documentation. On the other hand, there are no regulations that state that a fraudulent document cannot be retained if presented to a consular officer for verification or other action.
- b. In cases where a post is in a position to verify the legitimacy of a particular DHS document, posts should follow these instructions:
  - (1) If post is certain that the document is fraudulent (i.e., a counterfeit or a

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genuine document, which has been altered to allow its use by an impostor), posts are authorized to retain the documents;

- (2) If, on the other hand, a post is only doubtful as to the veracity of a document, then the post should return the questionable document to the bearer. If the alien is traveling, the post should notify the carrier (if known) that the document may be fraudulent. The carrier should be informed that if the document is in fact counterfeit or altered and the carrier has decided to risk transporting the alien, the carrier may be subject to DHS fines. In all cases, post should scan and e-mail a copy of the document to the Office of Fraud Prevention Programs (CA/FPP).
- (3) If this method does not satisfy the alien, then the consular officer should advise the alien to seek verification from the nearest DHS office.

**9 FAM 42.22 N13 SECOND PREFERENCE  
PETITION FILED ABROAD BY ALIEN  
DOCUMENTED AS RETURNING RESIDENT**

*(TL:VISA-284; 05-17-2001)*

See 9 FAM 42.31 N5.