



LAW OFFICE OF
MICHAEL B. DYE

LEAVING THE USA:

ABANDONING THE “GREEN CARD”

&

RENUNCIATION OF U.S. CITIZENSHIP

LEGAL OVERVIEW

DECEMBER 2015

WELCOME

AGENDA

**LEGAL OVERVIEW OF ABANDONMENT OF LPR OR
“GREEN CARD” STATUS**

**LEGAL OVERVIEW OF RENUNCIATION OF U.S.
CITIZENSHIP**

- MICHAEL B. DYE, ESQ.

Q&A

WHY INDIVIDUALS LEAVE THE USA?

Family
Abroad

Employment
Abroad

Retirement
Abroad

Cost of
Living

Connection
to Foreign
Environment





FILING AN I-407 – ABANDONING YOUR GREEN CARD

The standard procedure for formally abandoning your lawful permanent resident status varies at each Consulate and/or Embassy worldwide.

Generally:

If you are a Legal Permanent Resident and wish to file for the Abandonment of Lawful Permanent Resident Status you must visit a U.S. Embassy or U.S. Consulate to surrender the green card along with form I-407.

To abandon Lawful Permanent Resident status, you are required to bring the following documents to the U.S. Embassy or Consulate:

-  Proof of identity;
-  Your green card and a simple copy;
-  Reentry permit, if applicable (even if it has been expired) and a simple copy;
-  Form I-407 filled out and a copy.

PROCEDURES FOR FILING I-407

The Consulate or Embassy will return a copy of your completed I-407 to you as your receipt. Once the Consulate accepts your completed I-407 you will revert to nonimmigrant status.

You may also choose to submit Form I-407 or draft a letter stating your intent to abandon resident status and enclose your alien registration card via Certified Mail to USCIS.

Once the U.S. Citizenship and Immigration Services office receives your completed Form I-407 and permanent resident card/reentry permit (if applicable), the appropriate stamps will be placed on the form along with the USCIS officer's signature to show that you have formally abandoned your status. A copy of this form will be returned to you in the stamped, self-address envelope you provide. This is your record to show that you have formally abandoned your permanent resident status.

IRREVOCABILITY

- **The abandonment of lawful permanent resident status is irrevocable.**
- **Abandoning your Permanent Resident Card and status does not affect your ability to apply to immigrate to the United States at some future time. However, you will have to begin the process anew and apply through the usual application process.**

SEEKING A NEW B-1/B-2 VISITOR VISA

Unless the applicant holds a passport entitling him to benefits of the US 90-day visa waiver program, the individual will be required to apply for a visa in order to enter the US in the future.

POTENTIAL CONSEQUENCES OF NOT FILING I-407

- If you do not formally abandon your LPR status, immigration authorities at the Port of Entry may still consider you to be an intending immigrant. Even if you arrive with a valid B1/B2 visa, issued by a Consulate overseas, confusion at the Port of Entry may render you ineligible. If this occurs, you may also be required to depart from the United States or appear before an immigration judge in exclusion proceedings. If you are excluded and deported from the United States, you will not be allowed to return to the United States for one year, unless permission to return is granted.
- If you appear at the airport without a processed I-407 and your passport shows that you have previously been admitted as an 'LPR' (Lawful permanent resident) or "ARC" holder (Alien Resident Card), the airline in which you intend to travel may not allow you to board the aircraft.

NOTICE TO APPEAR

If the immigration officer at the port of entry determines that you have abandoned your residency based on the information they know and what you have provided, they will issue you a Notice to Appear (NTA). Your failure to respond to this Notice will result in the loss of your residency, and your removal from the United States.

TAX CONSIDERATIONS

Under the US tax rules, resident status is considered to be abandoned when the individual's application for abandonment (INS Form I-407 "Abandonment of Lawful Permanent Resident Status") or a letter stating the alien's intent to abandon his or her resident status, along with the green card enclosed, is filed with the US Immigration authorities or a consular officer.

You should look carefully at the rules for tax filings that may be required (for example, Form 8854 and the final income tax returns reflecting dual status tax years, in some cases). These issues, as well as possible tax planning, should be discussed with a tax professional before the green card is abandoned.

RENUNCIATION OF U.S. NATIONALITY

THE IMMIGRATION & NATIONALITY ACT

Section 349(a)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. 1481(a)(5)) is the section of law governing the right of a United States citizen to renounce his or her U.S. citizenship. That section of law provides for the loss of nationality by voluntarily



"(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state , in such form as may be prescribed by the Secretary of State" (emphasis added).

ELEMENTS OF RENUNCIATION

A person wishing to renounce his or her U.S. citizenship must voluntarily and with intent to relinquish U.S. citizenship:

- **appear in person before a U.S. consular or diplomatic officer,**
- **in a foreign country (normally at a U.S. Embassy or Consulate); and**
- **sign an oath of renunciation**

Renunciations that do not meet the conditions described above have no legal effect. Because of the provisions of Section 349(a)(5), U.S. citizens cannot effectively renounce their citizenship by mail, through an agent, or while in the United States.

REQUIREMENTS

A person seeking to renounce U.S. citizenship must renounce all the rights and privileges associated with such citizenships. In the case of Colon v. U.S. Department of State , 2 F.Supp.2d 43 (1998), the U.S. District Court for the District of Columbia rejected Colon's petition for a writ of mandamus directing the Secretary of State to approve a Certificate of Loss of Nationality in the case because he wanted to retain the right to live in the United States while claiming he was not a U.S. citizen.

DUAL NATIONALITY / STATELESSNESS

- **Persons intending to renounce U.S. citizenship should be aware that, unless they already possess a foreign nationality, they may be rendered stateless and, thus, lack the protection of any government.**
- **They may also have difficulty traveling as they may not be entitled to a passport from any country. Even if not stateless, former U.S. citizens would still be required to obtain a visa to travel to the United States, or show that they are eligible for admission pursuant to the terms of the Visa Waiver Pilot Program (VWPP).**

TAX & MILITARY OBLIGATIONS: NO ESCAPE FROM PROSECUTION

Persons who wish to renounce U.S. citizenship should be aware of the fact that renunciation of U.S. citizenship may have no effect whatsoever on his or her U.S. tax or military service obligations.

In addition, the act of renouncing U.S. citizenship does not allow persons to avoid possible prosecution for crimes which they may have committed in the United States, or escape the repayment of financial obligations previously incurred in the United States or incurred as United States citizens abroad.

RENUNCIATION FOR MINOR CHILDREN & INCOMPETENTS

Citizenship is a status that is personal to the U.S. citizen. Therefore parents may not renounce the citizenship of their minor children. Similarly, parents/legal guardians may not renounce the citizenship of individuals who are mentally incompetent. Minors seeking to renounce their U.S. citizenship must demonstrate to a consular officer that they are acting voluntarily and that they fully understand the implications/consequences attendant to the renunciation of U.S. citizenship.

IRREVOCABILITY OF RENUNCIATION

Those contemplating a renunciation of U.S. citizenship should understand that the act is irrevocable, except as provided in section 351 of the INA (8 U.S.C. 1483), and cannot be canceled or set aside absent successful administrative or judicial appeal. (Section 351(b) of the INA provides that an applicant who renounced his or her U.S. citizenship before the age of eighteen can have that citizenship reinstated if he or she makes that desire known to the Department of State within six months after attaining the age of eighteen. See also Title 22, Code of Federal Regulations, section 50.20).

CHOOSING A NEW PATH IN LIFE



LAW OFFICE OF
MICHAEL B. DYE

120 VANTIS, SUITE 300
ALISO VIEJO, CALIFORNIA 92656
USA

TEL: +1-949-540-6760

FAX: +1-619-342-8224

MIKE@MIKEDYELAW.COM

WWW.MIKEDYELAW.COM