

# Adjudicator's Field Manual

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## Chapter 52 Reentry Permits.

- 52.1 General
- 52.2 Filing and Receipting Procedures.
- 52.3 Adjudication
- 52.4 Production and Delivery.

## **52.1 General.**

### (a) Background.

The Service and USCIS have issued one form or another of reentry permit to permanent resident aliens for many decades. The permits are all prepared and issued out of a central location, providing a high level of security and quality of the permits. If you are unfamiliar with the security features of the current reentry permits, you should review the relevant document alerts issued by the Forensic Document Lab.

### (b) Validity.

Reentry permits are valid for a maximum period of two years unless otherwise restricted. The validity commences from the date of issuance, not from the date the application is received. A reentry permit cannot be extended.

## 52.2 Filing and Receipting Procedures.

(a) Application.

(1) Reason(s) for Applying for a Reentry Permit.

There are a number of situations wherein an alien may apply for a reentry permit, including:

- A resident alien who intends to remain outside the U.S. for a period of more than one year but no longer than two years and who does not intend to abandon residence in the U.S. may apply in order to establish his or her intention to return to the U.S. after his or her temporary absence from this country.
  
- Although a resident alien in possession of Form I-551 who intends to remain outside the U.S. for less than one year does not require a reentry permit, a resident alien who is "stateless" or who is unable to obtain a passport from the country of his or her nationality may apply for a reentry permit for use as a travel document.
  
- On occasion, a resident alien may apply because he or she will need a reentry permit to visit a certain country because that country will not honor a passport of the resident's country of nationality.
  
- A resident alien may apply for a reentry permit for any other bona fide reason.

### **Note:**

Certain resident aliens can reenter the U.S. with only their Form I-551 even after an absence of more than one year. Included in this group are civilian employees of U.S. Government agencies returning from assignments abroad on official orders and a spouse or child of a civilian employee of the U.S. Government or a spouse or child of a member of the U.S. Armed Forces as described in **8 CFR 211.1(a)(6)**.

(2) Application Form.

An alien seeking a Reentry Permit must do so on Form I-131, Application for Travel Document. This form is also used when requesting issuance of a refugee travel document or when requesting advanced parole (see **Chapter 53** and **Chapter 54** of this field manual).

(3) Filing Location.

An application for the issuance of a reentry permit must be filed at the following address:

USINS, Nebraska Service Center

P.O. Box 87131

Lincoln, NE 68501-7131

An alien must be physically present in the U.S. in order to file the application, and any application submitted by an alien who is abroad when the application is made must be denied. See **8 CFR 223.2(b)(1)**.

(4) Initial Evidence.

Form I-131 should be submitted with evidence of permanent resident status, normally a photocopy of I-551. Evidence that the alien has been processed for Form I-551 may also be presented as evidence of permanent residence.

(b) Verification of Status.

The first employee reviewing the application shall verify the status from the documentation submitted (normally a Permanent Resident Card, Form I- 551), and place the proper notation on the Form I-131. The Permanent Resident Card shall then be detached from the application and mailed back to the applicant. If the application is received without a Form I-551, and the alien's A file is available, the employee shall verify the alien's status and place the notation "file seen" beside the "A" number on the Form I-131, and initial and date his or her annotation. If an "A" file cannot be found and the applicant is not able to present a Form I-551, other evidence of admission for permanent residence listed in **8 CFR 103.2(b)(17)** may be accepted. A reentry permit will not be issued until there is satisfactory evidence on file to substantiate that the applicant is clearly eligible.

(c) Photograph.

Any photograph accepted must conform with ADIT instructions.

## 52.3 Adjudication.

### (a) Adjudication Actions.

#### (1) Review of Application.

(A) Review the application for completion of all necessary items and check against data in USCIS, on the I-551 or in the alien's file. If any data are incorrect, inaccurate, or left out, and if you are satisfied that there is no fraud on the part of the applicant, you may insert the correct information, if known. Any such changes or insertions should be made in red ink.

(B) If the applicant has had a change of name, he or she must submit appropriate documentation to support such a change.

(C) Reentry permits may not be delivered to the applicant's foreign address. The permits may only be delivered to the U.S. address of the applicant, the U.S. address of an authorized representative of the applicant (supported by a Form G-28), or a U.S. Embassy, Consulate, or DHS office abroad. Any application showing the applicant's address to be that of travel agency, should be returned to the applicant for the residence address of the applicant.

(D) [(b)(2) or (b)(7)(E)]

#### (2) Verification of Status.

(A) If the applicant has not presented the original or a photocopy of his or her Permanent Resident Card, you can verify the applicant's permanent resident status through USCIS; by requesting additional documentation from the applicant; or if necessary, by reviewing the applicant A-file.

(B) If the file does not contain evidence of permanent resident status and the applicant claims such status,

you should request that HQ Records conduct a manual search. In emergent cases, you may request verification telephonically. Written verification should follow the telephonic verification.

(C) Only in the most emergent cases, a permit may be issued without verification of the applicant's entry. When a permit is issued under emergent circumstances, you will forward the completed application to the files control office of residence for a post check of the applicant's file to assure that the permit was properly issued.

(3) Timeliness of Adjudication of Application.

Delay in adjudication of an application for a reentry permit may interfere seriously with the applicant's travel plan, and may generate inquiries from the applicant or Congressional offices. If travel is imminent because of emergent reasons, efforts should be made to adjudicate the application expeditiously.

(b) Adjudication Issues.

(1) Countries to Be Visited.

Under certain circumstances, the government may ban the travel of a lawful permanent resident to certain country or countries. If such ban is in effect, it will be published in the Federal Register. The Federal Register publication may also list certain exceptions to the ban. If an applicant wishes to travel to a banned country, his or her application must be denied, unless he or she falls within one or more of the authorized exceptions. At the present time, there are no bans in effect with regard to travel to specific countries.

(2) Prior Reentry Permits or Refugee Travel Documents.

If a previously issued reentry permit was not surrendered to the Service or USCIS by the applicant, you should request the alien return it or explain in detail the reason he or she cannot. You should resolve this matter satisfactorily before delivering the new permit. Retain the surrendered permit in the A-file. An expired permit may be returned to the bearer if it contains valid visas or other endorsements. The upper left corner of the cover and identity page must be clipped before returning the permit.

Note also that a reentry permit will not be issued to a lawful permanent resident who is already in possession of a refugee travel document, unless that (RTD) document is first surrendered.

(3) Temporary or Permanent Nature of Intended Absence.

You must determine whether the applicant's absence will be temporary. You should make this determination through a review of the record of proceedings and the applicant's A-file, if available. Some factors you should consider are the applicant's previous absences, the length of intended absence, and whether the applicant has ties (property, family, employment, etc.) in the U.S.

(4) Business or Employment Abroad.

If an applicant for a reentry permit has engaged in business or employment abroad for extended periods of time, pay particular attention to the response to the question of whether the applicant ever claimed nonresident alien status for Federal income tax purposes since becoming a permanent resident. Additionally, the applicant's location of employment is a factor to consider when determining if the applicant intends to depart the U.S. temporarily.

(5) Effect on Immigrant Status by Alien's Claim to Be a Nonresident for Federal Income Tax Purposes.

Aliens are classified for Federal income tax purposes either as "resident aliens" or "nonresident aliens." Resident aliens are, in general, taxed the same as U.S. citizens. A nonresident alien, on the other hand, is generally exempt from income tax on earnings derived from sources outside the U.S.

Aliens admitted to the U.S. as permanent residents or granted adjustment of status are ordinarily resident aliens for tax purposes. Under certain circumstances, however, in spite of lawful permanent resident status under the immigration laws, an alien may be considered a nonresident for tax purposes.



The Internal Revenue Service has identified two categories of aliens admitted or adjusted who are considered to have the status of nonresident aliens under the tax laws and regulations:

- Category A - An alien admitted as or whose status is adjusted to that of a permanent resident but who has no bona fide intention of establishing residence in the U.S. at the time accorded status as a lawful permanent resident. For example: a commuter defined in **8 CFR 211.5** prior to the time of taking up an actual permanent residence in the U.S.; an alien within the purview of **section 319(c)** of the Act who upon admission or adjustment neither intended to establish nor did establish a residence in the U.S. The alien is classified as a nonresident alien for tax purposes notwithstanding that the alien has not made application for or claimed such classification, has not abandoned immigration status as an alien lawfully admitted for permanent residence, and is still a lawful permanent resident alien under the immigration laws;

- Category B - An alien admitted to the U.S. as a permanent resident, or an alien whose status is adjusted, who upon admission or adjustment intends to and does establish residence in the U.S. but thereafter abandons it. The alien abandons residence in the U.S. and acquires the status of a nonresident alien under the tax laws and regulations, as well as under the immigration laws, only if each of the following occurs:

- The alien actually departs from the U.S.; and

- The departure is coupled with an intention to abandon residence in the U.S., or the alien forms an intention to abandon residence in the U.S. after departure from the U.S.

**Section 101(a)(20)** of the Act defines the term "lawfully admitted for permanent residence" to mean "the status of having been lawfully accorded the privilege of residing permanently in the U.S. as an immigrant in accordance with the immigration laws, such status not having changed." It follows, therefore, that an immigrant within the category (A) who is classified as a nonresident for tax purposes may nevertheless continue to enjoy the status of an alien lawfully admitted for permanent residence, unless and until the alien changes immigrant status by abandonment thereof. However, except for special classes of immigrants such as commuters who are maintaining their status or aliens engaged in employment abroad qualifying them for naturalization under section 319(c) of the Act, if a category (A) alien's absences are prolonged and frequent, and relatively little time is spent in the U.S., the alien may be found, on other than income tax considerations, not to be entitled to the status or benefits under the immigration laws which accrue to lawful permanent residents.

The immigrant within category (B), on the other hand, is an alien who, after admission for permanent

residence, established residence in the U.S. and voluntarily elected to claim nonresident status to qualify for benefits under the income tax laws.

By such election, the alien has taken on a status which is patently inconsistent with a continuance of status as a lawful permanent resident. In claiming nonresident alien status under the tax laws, the alien has tacitly represented that either at the time of departure from the U.S. or thereafter the intention of abandoning residence in this country was formed. Abandonment of residence by an immigrant, for whatever purpose, effectively extinguishes status as a lawful permanent resident because it constitutes a change of status within the meaning of section 101(a)(20).

You should pay special attention to the responses to the question of Form I-131 regarding any claim the applicant may have made for nonresident alien status for federal income tax purposes. If the applicant admits having claimed nonresident alien status for federal income tax purposes (either by having filed a return because their income was earned abroad and the alien therefore regarded it to be exempt from tax due to being a nonresident), you should be alert to the possibility that the alien, unless in category (A), may have abandoned residence for immigration purposes. If there is a question whether the applicant is within category (A) or (B), resolve it by correspondence or interview.

When you request an applicant to submit copies of returns filed for suspected tax periods, and the applicant fails to comply without furnishing a satisfactory explanation, you may deny the application for lack of prosecution after two requests. If the applicant claims to have filed tax returns but does not have copies of those returns, you should request that the applicant execute a consent to have copies of the returns furnished by the Internal Revenue Service. The consent can be prepared on regular USCIS letterhead stationery. If the consent is returned, mail it to the Internal Revenue Service Center having jurisdiction over the address where the alien filed the tax return. If more than one center is involved, the applicant should execute separate consents for each center. Note that if the alien used a foreign address in filing any of the pertinent returns, the consent should be sent to the IRS Center, 11601 Roosevelt Boulevard, Philadelphia, PA 19155.

USCIS Headquarters should be notified promptly if any difficulties are experienced in the routing of the consents to the proper Internal Revenue Service Center, or in obtaining requested copies from that Service.

Alternatively, you may request the alien to obtain certified copies from the IRS. If, after examination of copies of the applicant's income tax returns obtained from the IRS, you determine that the applicant did claim nonresident status for income tax purposes and that the case appears to be within category (B), process the application in the manner described for aliens who appear to be within that category.

(6) Possible Inadmissibility.

The fact that an applicant may be inadmissible upon return to the U.S. is not a ground for denying a reentry permit. In such a case, however, if the alien is still in the U.S., you should notify the alien of the possible inadmissibility and explain the ramifications of traveling outside the U.S. Several possibilities arise, including:

- If the alien is eligible for a waiver under section 212(c) of the Act (as someone who falls within the decision in *INS v. St. Cyr.* 121 S. Ct. 2271 (2001) (see Chapter 41.2 of this field manual), he or she may apply for such waiver in conjunction with the reentry permit application. If you approve the waiver, annotate the “Restrictions” area of the permit.
  
- If the alien is eligible for a waiver under section 212(g), 212(h), or 212(i) of the Act, he or she may apply for such waiver in conjunction with the reentry permit application. If you approve the waiver, annotate the “Restrictions” area of the permit.
  
- If the alien will be traveling outside the U.S. for less than 181 days and he or she does not, or will not, fall within the provisions of paragraph (i), (iii), (iv), (v) or (vi) of section 101(a)(13)(C) of the Act, you may explain to the alien that if he or she is gone from the U.S. in excess of 180 days he or she will be considered to be an applicant for admission upon return to the U.S. and may well be found to be inadmissible. You may then approve the reentry permit for a period which does not exceed 180 days.
  
- If the alien is not eligible for a waiver of inadmissibility under section 212(c), 212(g), 212(h), or 212(i) of the Act, will be making an application for admission upon his or her return, and still desires to travel, take a sworn statement which establishes the applicant’s identity, alienage, inadmissibility, and understanding of the risks he or she would be taking be departing from the U.S. You may then approve the reentry permit application, annotating the Restrictions area of the permit “Possible Inadmissibility, Section 212(a)(X) of the Act” (where “X” is the ground(s) of inadmissibility).

(7) Waiver of Diplomatic Rights.

In the case of an I-131 applicant who is a lawful permanent resident, but who is within the purview of section 247 and fails to execute the waiver Form I-508 and, if applicable, the required election on Form I-

508F, section 247 proceedings shall be instituted immediately, and the applicant informed that he will be required to obtain an appropriate nonimmigrant visa and passport if he desires to return to the U.S. When a permit is issued to an applicant who has executed Form I-508, the permit shall be endorsed above the line containing the file number "Form I-508 executed \_\_\_\_\_, 20 \_\_\_\_\_," followed by the initials of the employee who prepared the permit.

(8) Applicant Checked the Wrong Box on Application.

The applicant will be issued the document he or she requested, if eligible. However, if the applicant has merely checked the wrong block and is clearly eligible for issuance of a different travel document, the application will **not** be denied. If the applicant can be issued a refugee travel document, approve the application and have the refugee travel document issued. If it appears the applicant is eligible for advance parole, return the application to the applicant, advising him or her to submit the application to his or her local USCIS office.

(9) Applicant is a Conditional Permanent Resident.

A Conditional Permanent Resident may apply for and be issued a Reentry Permit, just like any other Lawful Permanent Resident. (However, the permit may not be valid beyond the date on which the Conditional Resident's status will expire.)

(10) Treaty Merchants.

A reentry permit may be issued only to a lawful permanent resident or to certain treaty merchants admitted before 1932 who are physically present in the U.S. when filing the application. You will rarely, if ever, encounter an alien who claims eligibility for a reentry permit as a treaty merchant, and any you do encounter may be eligible for creation of a record under **section 249** of the Act (see **Chapter 23** of this field manual).

(11) Other Long-term Residents Lacking LPR Status.

Occasionally, an alien with long residence in the U.S. will file a Form I-131 with Form AR-3 or AR-103. In those cases, it will be necessary to verify the alien's permanent resident status through a review of the record. If the record shows that the applicant has never established permanent resident status and has resided in the U.S. for a number of years, the alien may be eligible for creation of a record of lawful admission for permanent residence pursuant to **section 249** of the Act (see **Chapter 23** of this field manual).

(c) Closing Actions.

(1) Approval and Period of Validity of Permit.

If you approve the application, the permit should be made valid for two years, for multiple entries, unless otherwise restricted. However, the validity period of a reentry permit issued to a conditional resident must be restricted to the date of expiration of the conditional resident's status unless the applicant has filed a Form I-751 and it has been granted. You can use the Marriage Fraud Amendment System (MFAS) to verify the status of any Form I-751 filed.

(2) Denial of Application.

If you deny an application, prepare and forward the decision to the alien on Form I-292, with attached I-290B in the event the alien wishes to appeal.

When you deny an application for a reentry permit on the ground that the applicant had abandoned lawful permanent resident status, and the applicant is within the U.S., refer the case to Investigations for consideration of instituting expulsion proceedings on the ground that the alien was not admissible as a returning resident at the time of last entry. If the applicant is abroad and it appears that there may be an attempt to return to the U.S., consider posting a lookout notice, or notifying the port of entry if the date, place and manner of proposed reentry are known.

(d) Precedent Decisions.

The following is a list of precedent decisions which pertain to the adjudication of an application for a reentry permit, with a brief synopsis of each.

(1) General.

- **Matter of V--**, 4 I&N Dec. 143 (BIA 1950; Acting Attorney General 1950). Upon return to U.S., a reentry permit which has not been procured by fraud or misrepresentation must be accepted as establishing that the alien is returning from a temporary visit abroad.
- **Matter of M--**, 4 I&N Dec. 189 (Central Office 1950; BIA 1951). Inadvertent issuance of reentry permit to alien not entitled to such document cannot give the alien a status denied by law.
- **Matter of Paparo**, 10 I&N Dec. 649 (Acting Regional Commissioner 1964). Application for reentry permit must be submitted prior to departure.
- **Matter of Esposito**, 10 I&N Dec. 661 (Regional Commissioner 1964). Alien who entered the U.S. unlawfully and remained in illegal status is ineligible for a reentry permit.
- **Matter of Mosqueda**, 14 I&N Dec. 55 (Regional Commissioner 1972). Discretionary denial where applicant would be executing outstanding order or deportation by departure.

(2) Residence.

- **Matter of Manion**, 11 I&N Dec. 261 (District Director 1965). An applicant is eligible who has been in the employ of an American firm abroad and who has close family ties in the U.S.
- **Matter of Wu**, 14 I&N Dec. 290 (Regional Commissioner 1973). Despite short stays in the U.S., denial of application was incorrect because applicant has maintained ties in U.S., absences abroad were in

connection with employment by an American firm, and application to preserve continuity of residence for naturalization purposes had been approved.

- **Matter of Souqi**, 14 I&N Dec. 390 (Regional Commissioner 1973). Application granted for purpose of returning abroad for approximately two years to dispose of business and home and to arrange to bring immediate family to U.S. for permanent residence.

- **Matter of Guoit**, 14 I&N Dec. 393 (District Director 1973). An alien who desires to depart for approximately two years to teach at a university abroad, who is taking with him his family and all possessions, and whose principal place of abode will be abroad, but who intends to return to the U.S., is eligible for a reentry permit.

- **Matter of Thomopoulos**, 15 I&N Dec. 466 (Acting Regional Commissioner 1975). In determining intent to depart temporarily, the following factors should be considered: duration of absence; motive for departure; location of applicant's job, family ties, and property holdings, and date of intended return.

- **Matter of John**, 17 I&N Dec. 534 (Regional Commissioner 1980). An alien absent for extended periods of time performing missionary work abroad for a recognized U.S. religious denomination is eligible for a reentry permit.

## 52.4 Production and Delivery.

### (a) Timeliness of Preparation of Reentry Permit.

When you approve a Form I-131, have the permit prepared as soon as possible. Remember the permit is valid for two years from the date of issuance. If there is a significant backlog in the clerical section of your office, it may be advisable to note the instructions "permit valid for two years," rather than indicating a specific date. Be sure that your clerks then give a specific date two years from the date of preparation (issuance).

### (b) Production of the Document.

The Nebraska Service Center uses a computer program to print the reentry permits. This I-131 program automatically pulls the data from CLAIMS pertaining to the application. This data must be verified and updated as necessary prior to printing the reentry permit. The following blocks on the reentry permit need not be completed: country of claimed nationality, eyes, hair, height and visible scars and marks. Examine the reentry permit carefully before delivery to insure that the validity date, photograph and all notations are correct. Photographs on reentry permits should conform to the same requirements for issuance of Form I-551.

### (c) Delivery.

#### (1) In the United States.

When a permit is to be delivered by mail in the U.S., the applicant's signature and photographs shall be compared with the signature and photographs contained in his file. Any question as to identify shall be resolved by personal interview. Form M-91 shall be used to effect delivery of the permit.

#### (2) Abroad.



A reentry permit shall be forwarded to a DHS office abroad [see 8 CFR 103.1(c)] if one is located where delivery is to be made; otherwise it shall be forwarded to a U.S. embassy or consulate. The permit shall be accompanied by a properly completed Form G-94, in duplicate, and shall be forwarded abroad by registered mail.

**Note 1:**

Do not send a reentry permit to the U.S. Embassy at the Hague, the Netherlands. A reentry permit for the Netherlands should be sent to the Consulate at either Amsterdam or Rotterdam, as appropriate.

**Note 2:**

At one time the Service would, upon request of the bearer, add extra pages to a previously-issued reentry permit if there was insufficient space available in the permit for any more foreign visas or entry/exit caches. However, USCIS no longer adds such additional pages to a previously-issued reentry permit and any alien who requests additional pages should be advised to file an application for a new permit. In doing so, the alien should submit the old reentry permit. (However, the alien may request that the Service return the old permit (after it has been cancelled by USCIS) if it contains valid nonimmigrant visas for other countries which the alien will be visiting.)