

Immigration Questions Answered

By: Neelofer Syed, ESQ

Before I start this article I want to thank all the readers for appreciating my articles. I hope to continue to provide CityMasala readers with as much useful information as I can.

In this article, I will be answering some questions that I have received from readers. I have chosen these questions because there could be a lot of people facing similar situation and the answer to few will address concerns of many. Please note we are not printing the names in order to maintain privacy.

The first question was sent by a reader who is facing the issue of adding his spouse on an already pending Green Card Application based on Employment. Adding the spouse is not an issue in this matter but the issue is something else. Here's the question from the reader:

Question:

I have applied for my GC on Sep'2007 under priority date Mar'2005. Now I got married to a woman who does not have any status, and she also have not been entered U.S legally. She does not have any proof of the day she was entered in the U.S. My questions are:

- a) Can I join her in my pending status to get her GC, if so, then, do I need to wait for Priority date for her?
- b) Also when filling for I485, in form 325 Biographic information I want to change family (parents) information, such as DOB, Country of Residence. Can I do it now? Does it make any difference if it is not reported or updated accurately on my file, if yes then what to do?

Answer:

It was not a big deal at all to add your wife only if she had entered legally and had maintained her legal non immigrant status until the time you filed her Green Card application. The only way you may still be able to do this is ONLY if she has 245(i) benefit. In other words if she was a beneficiary of an immediate relative petition or labor certification filed for her prior to April 30th 2001, or filed for any one in her family through whom she could have claimed derivative status, then she could potentially adjust through you in your current case. In terms of filing you will file her application as soon as the priority date is current (as long as she is eligible to adjust through what I explained above).

Regarding your next question about the G-325, you can prepare an amended G-325 and send it in right now so that it can become a part of your file. You may want to keep a copy with mailing confirmation to show it to the USCIS officer at the time of your adjustment interview, in case you are scheduled for one.

Ms. Syed is a practicing attorney with Perez and Associates, specializing in immigration law. Please send your questions concerning immigration issues to legal@citymasala.com

IMMIGRATION

Question:

My sister, who is a green card holder for the past 10 years, has been visiting the USA and staying for 3 months at a time. Each time she comes here she applies for reentry permit and has been granted so far till her last visit last year. She had to come back within a year this visit. She came this month November and the immigration dept made a note in the system that the next time she comes back they would have a judge decide the outcome if she will be allowed to stay etc. My sister has children both in the USA and India and lot of property back in India. Can you please suggest what the possible legal ramification are and what is the best option available if she wants to keep coming back to the USA instead of staying here permanently at this time. Thanks for your input.

Answer:

The Permanent residency, as the term suggests is for people who have the intention to reside in United States on a permanent basis. Since you have not mentioned any reasons as to why your sister is spending more time out of the United States, I will assume that your sister never really intended to stay in the U.S. permanently and she is using her green card status more like the visitor visa.

The fact is that the CBP can very well place her in removal proceedings giving the reasons that she apparently has abandoned her residency.

The law provides ways and means for permanent residents to live outside the United States for longer periods. The Reentry Permit is one such example which is granted to people who are returning from outside the U.S. after spending more than one year at a stretch or who are otherwise spending less time in the U.S. than they are required to, due to legitimate reasons.

In this case it is extremely important that your sister is able to establish her ties in the United States. In other words if she is placed in deferred inspection, or if she is placed in removal proceedings for the reason that she has potentially abandoned her residency, she needs to be prepared to defend herself.

In order to defend herself she will first need to have a legitimate reason for her staying outside the United States for longer periods. Second, she must have documentation showing that she has permanent ties in United States like, her children, her residence (rent or mortgage), bank accounts, driving license, auto and other insurance, etc. Please note that this is just an example of the documents. The point is that she will need to overcome the assumption of abandonment of her resident status.

Procedurally if she leaves this time, the next time she enters, she can potentially be placed in removal proceedings. At such time she will be given a Notice to Appear before the immigration Court. I recommend that she is represented by an Attorney at such proceedings because these are complex matters and best handled by experts in the field.

Lastly I wish all the readers a very Happy New Year. Keep reading and lets hope the new year brings good news about immigration reforms.



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