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PERMANENT RESIDENTS ELIGIBLE FOR IMMIGRANT VISAS, STATE DEPT. SAYS

In recent correspondence, the State Department has confirmed that an alien is eligible to receive an immigrant visa even if he or she is already a permanent resident of the U.S. H. Edward Odom, the State Department's Chief of the Advisory Opinions Division for Visa Services, discussed the matter in separate correspondence with Washington, D.C. attorneys Laurence F. Johnson and Stephen C. Trow.

In an October 1991 letter, Mr. Johnson noted that a U.S. consulate in Canada refused to issue an immigrant visa to an alien on the grounds that the alien was already a permanent resident of the U.S., the result of her status as an asylee from Iran. He asked whether this necessarily precluded the alien from being granted an immigrant visa.

In a November 27, 1991 response, Mr. Odom said that the alien's status as a permanent resident did not preclude her from seeking resident status through the provisions of the INA. It is not necessary for the alien to surrender her valid green card at the time she receives her visa, Mr. Odom added.

This seemingly innocuous situation actually reveals important information for permanent residents from certain countries. A typical I-551 (green card) includes coded information indicating how the bearer obtained his or her permanent residence. For example, if the person obtained residence after being granted asylum in the U.S., that fact is reflected in code on the I-551. Some foreign governments are very sensitive to the codes, so that when a permanent resident who is a citizen of such a country attempts to enter the country, the government may find out that he or she was granted asylum in the U.S. This may open the person to reprisals by the foreign government. By contrast, an alien may have an easier time entering his or her native country if the code on the green card reveals that the alien gained permanent residence through a preference petition.

Mr. Odom received a similar inquiry in December 1991 from Mr. Trow, who set forth the following facts. A permanent resident who has been posted abroad for several years recently married a foreign national abroad. The permanent resident's employer now wishes to transfer him back to the U.S. To avoid a long wait for a family second preference visa for the spouse, the employer files, and the INS approves, an immigrant visa petition for the permanent resident under the employment-based first preference. The permanent resident then applies for a visa at a U.S. consulate abroad. At the time of his visa interview, the resident relinquishes his green card and applies for a new immigrant visa based on his approved visa petition. His wife applies for an immigrant visa as a derivative beneficiary.

Mr. Trow asked whether, assuming the INS approves the petition and the husband and wife are not excludable, the consulate can issue the visa. Also, may the consular officer conduct the interview and make a determination to issue the immigrant visas before the principal applicant relinquishes his permanent residence?

In a January 3, 1992 response, Mr. Odom reiterated that a permanent resident is not precluded from filing another immigrant visa petition, or from obtaining derivative status for his or her spouse. Mr. Odom added that the alien would not have to relinquish the green card.

Mr. Odom noted, however, that a prolonged stay by an alien abroad may lead to possible loss of permanent resident status. This determination is up to the INS.

Mr. Odom's letters to both attorneys are reproduced in Appendix II of this Release.

For a prior article on this issue, including an INS legal opinion, see 67 Interpreter Releases 469, 486 (Apr. 23, 1990).

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