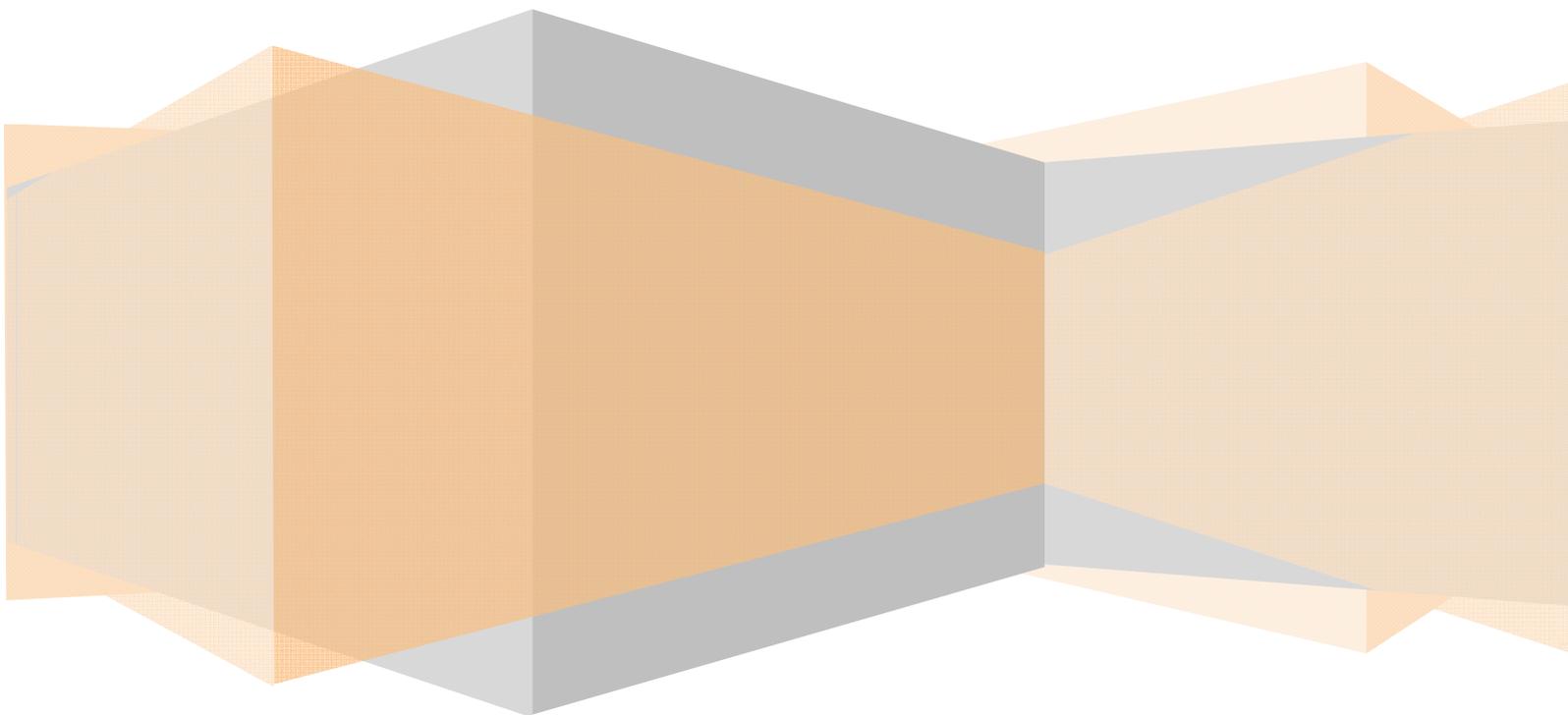


Important FAQs on eb5 programs

Part II

(answers applicable as on the date of being published – 19th
December, 2016)



Being encouraged with the over-whelming positive feedback on publishing of our Part I of FAQs, we are releasing a few more for educative use:

Q - What is the validity of EB-5 program?

A - EB5 is not a life-time program. US Government has been thinking of amending this program for quite some time. A three year extension was granted under the Obama government which ended in September 30, 2015; thereafter an extension for one year was given which ended in September 30, 2016; again thereafter a two months extension was given which ended in December 9, 2016 and the recent most extension is now set to expire on April 28, 2017.

Q - Once the i526 is approved, where will the interview take place?

A - The country of origin or where the respective applicant is based would be the place of interview. Often one member of the family is located in India and the other member in another country, for instance a student attending school in the United States. In such a case, the student does not have to return to the country of origin being India and can adjust status in the United States *per se*.

Q - If any i-526 petition is approved by USCIS, what is the purpose of the Consulate application and Interview?

A - Upon approval of the i-526 petition, an applicant must wait for notification from the United States Consulate in the respective home country (India being for most applicants applying from India) to prepare documents for the Visa interview. The purpose of this procedure is to ensure that the investor and his or her family undergo medical, police, security and immigration history checks before the conditional permanent resident visas are issued. At the interview, the consulate officer may address these issues and information printed on your i-526 application, including asking the investor to summarize the nature of his or her immigrant investment. If the investor and his or her family are in the United States at the time of such approval, then you may apply for adjustment of status by filing form I-485. Please note adjustment of status is not required when the applicant whose i526 is approved is residing in India.

Q - What is the difference between “provisional” and “permanent” Green Card?

A - A “conditional green card” is called a “provisional green card”, and at times confusingly called as a “conditional permanent green card”. Either way called, it offers the same rights and privileges as that of a “permanent green card”. One year and nine months after it is issued, a three-month window opens up during which an individual must file another application (I-829) with the USCIS to verify that all of the required funds have been invested throughout the stated conditional residency period and the requirement of creating ten new American jobs has been met. When the conditional resident status has been approved, full unconditional resident status is granted and a permanent green card is issued.

Q - What is the difference between permanent green card and citizenship?

A - The question prior to this one was the difference between “provisional” and “permanent” green card. The question now in subject is the difference between “permanent” green card and “citizenship. The two should not be confused. Once you obtain a permanent Green Card, you have most of the rights and obligations of United States citizens, except that you cannot vote and are not entitled to some public benefits. You are subject to the same tax filing requirements and entitled to the same tax rates and deductions as United States citizens. Your “Green Card” is your most important travel and identification document. As far as migrating from “green card” to “citizenship” is concerned, there are 2 approaches. One is by being born in the United States or being born to a United States citizen. The other way is by Naturalization. Being an LPR for five years is one of the basic requirements for qualifying for naturalization. A second requirement is being physically present in the United States for thirty months during the five years prior to the naturalization application. Once becoming a United States citizen, an individual is entitled to benefits including the right to vote and hold public office.

Q - What will happen if the applicant has faced some sort of a rejection by USCIS for an L-1, E-2, B, or other visa?

A - Rejection *per se* in the past does not disqualify the applicant, unless the reasons are related to immigration fraud.

Q - Can your Green Card be taken away?

A - Once a Green Card is received, there are only two conditions required to keep it safe. First, you must not become removable or inadmissible. The most common way of doing this is to be convicted of a serious crime. The second requirement is based on the amount of time/months you spend in USA vs. somewhere else. As long as you are not planning to make your home somewhere else, then legally you are still a resident of the United States. As a general rule, if you have a Green Card and leave the United States for more than one year, you may have a difficult time re-entering the country. That is logical too, because the USCIS would feel that an absence of longer than one year indicates a possible abandonment of United States residence. To avoid a full-scale inspection, you should return within six months. It is a common misconception that to keep your Green Card all you need to do is enter the United States at least once a year. The fact is that if you ever leave with the intention of making some other country your permanent home, you give up your United States residency when you go. The USCIS will look to your behaviour for signals.

Q - I have a Green Card and plan to travel out of the United States for a long time. What would be the outcome?

A - The primary rule surrounding Green Cards is that you lose it if you give up your United States residence. The only decisive way to conclude your intent is by calculating the amount of time you spend in USA over any other country. There are three important time limits to know here:

- If you are absent for less than six months, you will rarely have a problem. It is up to the USCIS to prove that you abandoned your residency.
- If you are absent for more than six months but less than a year, the burden of proof reverses. It becomes your job to prove your intent and sincere willingness to remain a resident of USA.

- If you are absent for more than a year, your Green Card will be considered almost nearly abandoned. Once that happens, there is usually no recourse.

Q – What is it that an applicant can do who has no choice but to leave United States at a stretch for more than a year?

A - The way to work around this is by applying for a re-entry permit (Form I-131). This is to be done before you leave the United States. You can however depart before the re-entry permit is issued. With such a re-entry permit, you can return to the United States even after one year until the re-entry permit's expiration date is not touched. Re-entry permits are normally issued for two years. You cannot renew a re-entry permit, but you can return to the United States at once and apply for a new one. The second such re-entry permit will be granted for two years also, but subsequent ones may only be approved for one year. Again, all of these will go on to proving your intent of "permanent residency" either way.

Q. Why do I need to start paying taxes in USA on receipt of provisional green card? Also, please clarify would that be required only on receipt of provisional green card or even otherwise while working on H1B in USA?

A - The background to this question has been answered in our previous round of FAQs, please refer the same. Further to it, please read the definition of "US Resident" to understand this subject at a grass-root level. To explain it in simpler words, a person becomes a "US Resident" for tax purposes under two routes: 1) By virtue of the 'green card' test; or 2) By virtue of the 'substantial presence test'. The answer to your first question would be apropos number 1 above. The answer to your second question would be apropos number 2 above, the reason being most people working on H1B in USA would end up fulfilling it. As per the current regulations, as applicable on the date of publishing this answer, any individual who has spent 31 days during the current year and 183 days during the 3 year period that includes the current year and the 2 years immediately preceding (calculated as follows: all the days present in the current year, plus 1/3rd of the days present in the first year before the current year, plus 1/6th of the days present in the second year before the current year), shall be deemed to be a US Resident for taxation purposes. The arena of this definition is enormously wide.

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