

TRAVEL ADVISORY FOR NON-CITIZENS

Disclaimer: This advisory has been created by The Legal Aid Society's Immigration Law Unit. This advisory is not legal advice and does not substitute for the advice of an immigration expert.

Over the years, U.S. Department of Homeland Security (“DHS”) agents have placed thousands of non-citizens in removal/deportation proceedings, often following a trip abroad. Below are some questions and answers that may help you decide whether you can leave the United States and come back without causing immigration problems. Generally, the answer will depend on the facts of your individual case. If any of the following things apply to you, you should seek legal advice from a reputable, experienced immigration lawyer before making any plans to leave the U.S.

I am a lawful permanent resident of the United States (green card holder) without any prior law enforcement contact of any kind. If I travel outside the United States, can I come back?

YES. As a lawful permanent resident you are free to exit and re-enter the U.S. To re-enter, you need to show your green card (or an unexpired “I-551 stamp” in your passport if you do not yet have your green card), along with a valid passport from your country of nationality or a refugee travel document. As long as you do not stay outside of the U.S. for more than one year, you will keep your permanent residence status. Note, however, that even a departure of more than six months is not recommended, as it will break continuous residency for naturalization purposes and can subject you to an in-depth inquiry into your current ties to the U.S., upon your return. You can take steps to preserve your lawful permanent status if you must remain outside of the U.S. for longer than a year, but these steps must be taken **BEFORE** you leave the U.S. If you think that it is possible that your trip will last longer than one year (or even just longer than six months), seek legal advice from a reputable, experienced immigration lawyer before you leave the U.S.

I am a lawful permanent resident of the United States (green card holder) and have prior law enforcement contact. If I travel outside of the United States, can I come back?

YES BUT. Depending on the charges against you, DHS may start removal/ deportation proceedings against you if you travel and seek to return if you have certain criminal convictions. DHS may put you in immigration detention while they try to remove/deport you. If you were arrested, but not convicted, be sure to travel with documentation proving that the criminal charges were dismissed, such as a Certificate of Disposition. Note, however, that you may be found removable/ deportable even for convictions where you paid a fine or got probation, or which were expunged. In some cases, even without a conviction DHS might say they have “reason to believe” you might be inadmissible for certain things; this is particularly a concern if you have stayed outside the U.S. for more than 180 days. If you have ever been arrested, whether or not you were convicted, seek legal advice from a reputable, experienced immigration lawyer before you leave the U.S.

I am currently in removal (deportation) proceedings. Can I travel?

DEPENDS. If you are a lawful permanent resident (green card holder) and are currently in removal proceedings in immigration court, you should be able to leave and re-enter the U.S., as long as you have both (i) a valid non-expired passport, and (ii) a non-expired green card,

or a non-expired I-551 stamp in your passport or on an I-94 card. Depending on the facts of your case, though, you might be treated as an “arriving alien” when you return, which could affect your rights. Also, depending on the facts of your case, you might be subjected to mandatory detention upon your return. Moreover, if your green card expires while you are outside the U.S. and your absence is for an extended period of time, you might have difficulty renewing it (depending on the facts of your case), which could complicate your ability to return. Regulations allow green card holders to apply for a re-entry permit, and allow refugees to apply for a refugee travel document, to travel even while in removal proceedings. Note, however, that even with those documents, travel abroad while in removal proceedings can be complicated. Seek legal advice from a reputable, experienced immigration lawyer if you are in this situation.

I have a prior removal (deportation) order. Will I be able to return to the United States if I leave?

DEPENDS. If you have been ordered removed/deported, by leaving the U.S. you will be deporting yourself. You will not be allowed back into the country if you travel, unless you have obtained a certain “waiver” in advance, or unless a certain amount of time has gone by after you leave, and you then apply for a new visa or other permission to return. (Depending on why you were ordered removed/deported, you might not be able to return, even after a certain amount of time has gone by.) If you were ever sent a **Notice to Appear** in immigration court, you might have been ordered removed/deported. Even if you never showed up for your court appearance, you may have been ordered removed/deported in your absence. Many people have prior removal/deportation orders and do not know about them. To find out if you have been ordered removed/deported, you can call the Executive Office for Immigration Review automated hotline at 1-800-898-7180. It is safe to call. You will need your alien registration number (A-number) to use the hotline.

I came to the United States unlawfully or stayed past the time allowed on my visa. Will I be able to return to the United States if I leave?

DEPENDS. If you came to the U.S. legally but stayed longer than allowed on your Form I-94 Arrival/Departure Record (the white or green card which might have been stapled to your passport when you came into the U.S., or which you might be able to download from i94.cbp.dhs.gov), or if you entered the U.S. unlawfully by crossing the border without inspection or with fake documents, you are considered “out of status” or undocumented. If you leave the country, you have no right to come back in unless you go to a U.S. Embassy or Consulate in your home country and apply for a visa. The period of time you were living in the U.S. when you were “out of status” is called unlawful presence. If you have more than 180 days but less than a year of unlawful presence and you leave the U.S., you will not be allowed to get a visa to return to the U.S. for three years. If you have one year or more of unlawful presence and you leave the U.S., you will be barred from getting a visa for ten years. These are called the **three-year or ten-year bars due to unlawful presence**. Even if you are not subject to the three-year or ten-year bar, if you were in the U.S. unlawfully and you leave, it will likely be difficult for you to obtain a visa in the future because you will need to prove to the U.S. government that you will comply with the terms of a new visa. In certain circumstances, you might be able to ask for a “waiver” of the three-year or ten-year bar in advance, before you travel. Seek legal advice from a reputable, experienced immigration lawyer before you leave the U.S.

I still have a valid nonimmigrant visa in my passport, and the visa allows multiple entries.

Can I use it to come back in to the U.S.?

YES, but only if you are now in status. This means that you have not stayed in the U.S. past the date written on your Form I-94 Arrival/Departure Record (the white or green card which might have been stapled to your passport when you came into the U.S., or which you might be able to download from i94.cbp.dhs.gov). If you are “out of status” you can NOT come back to the U.S. on your visa. If you stayed in the U.S. even one day past the date written on the I-94, your visa is canceled. You will have to get a new visa from the U.S. Consulate in your home country before you can come back to the U.S. (In some cases, you can make a visa application in a country other than your home country.) The three-year or ten-year bar rule, described above, may apply to you, depending on the amount of time you were out of status. Seek legal advice from a reputable, experienced immigration lawyer before leaving the U.S.

I came into the U.S. on a temporary visa and I have an extension or change of status application pending with the DHS. Can I leave the U.S. and come back?

NO. If you leave the U.S. while your application is pending, DHS will consider your application withdrawn or abandoned. If you urgently need to leave the country, you can ask DHS to speed up the processing of your application. You can call DHS at the number printed on your receipt notice.

I have an Adjustment of Status Application (Green Card Application/Form I-485) pending. Can I leave the U.S. and come back?

DEPENDS. Leaving the U.S. while your adjustment of status is pending (unless you have an H-1B or L-1 visa) will generally have the legal effect of withdrawing or abandoning your application. However, before traveling you can ask DHS for permission to leave the U.S. by making an application for **Advance Parole**. Advance Parole is permission for certain non-citizens to re-enter the U.S. after traveling abroad. If you have an approved, unexpired advance parole document, then leaving the U.S. will not be considered abandoning your adjustment of status application. Seek legal advice from a reputable, experienced immigration lawyer before leaving the U.S.

If I get Advance Parole, am I guaranteed re-entry into the United State?

NO. The grant of Advance Parole does **not** waive any grounds under which DHS may normally deny you re-entry to the U.S. If you have committed, been arrested for, or been convicted of any criminal offense, DO NOT leave the U.S. on a grant of Advance Parole without first seeking legal advice from a reputable, experienced immigration lawyer. Even if you have Advance Parole, DHS may deny you re-entry.

I have an asylum application pending. Can I leave the U.S. and come back?

DEPENDS. If you leave the U.S., DHS will generally consider your asylum application withdrawn or abandoned. You can ask DHS for permission to leave the U.S. by making an application for Advance Parole, but this does not guarantee that you will be allowed back into the U.S. You should not travel on a passport from the country that you claimed you would be persecuted in. Also, if you travel to the country that you claimed you would be persecuted in, it is likely that USCIS will deny your asylum application because it may conclude that you no longer fear returning to that country. Seek legal advice from a reputable, experienced immigration lawyer before leaving the U.S.

I am an asylee or I obtained my lawful permanent resident status after obtaining asylum.

Can I travel outside the U.S. and come back?

YES, but only if you first obtain a **Refugee Travel Document** from DHS. Do not travel on a passport from the country that you claimed you would be persecuted in. Also, if you travel to the country that you claimed you would be persecuted in, DHS may seek to terminate your grant of asylum. Your underlying asylum status could be terminated even if you have already become a lawful permanent resident after obtaining asylum, if you travel back to the country of claimed persecution, if you use the passport from that country, or if avail yourself of the protection of that country in any way. Seek legal advice from a reputable, experienced immigration lawyer before leaving the U.S.

I have U Nonimmigrant Status. Can I leave the U.S. and come back?

YES BUT TRAVEL NOT ADVISED. If you travel outside the U.S. after your U approval but you do not have a valid U visa in your passport, you must (a) apply for a new U visa at a U.S. Consulate abroad to allow you to come back to the U.S., and (b) return within 90 days or you will lose eligibility for adjustment of status (applying for a green card). If you had accrued more than 180 days of unlawful presence before leaving, you will need to seek a waiver of the three year or ten-year bar before you apply for a visa to return to the U.S. Seek legal advice from a reputable, experienced immigration lawyer before leaving the U.S.

I am applying for U Nonimmigrant Status, and my application is pending. Can I leave the U.S. and come back?

YES BUT TRAVEL NOT ADVISED. If you travel outside the U.S. while your application for U nonimmigrant status is pending, and if you are not otherwise authorized to enter the U.S., you will have to stay outside the U.S. until your actual U visa is approved, possibly many years after leaving, unless you are granted parole to return. If you had accrued more than 180 days of unlawful presence before leaving, you will need to seek a waiver of the three-year or ten-year bar before you would be eligible to return. If the investigation/prosecution of the U qualifying crime is still ongoing, leaving the U.S. could also affect your ability to cooperate with law enforcement; if you are not cooperating with law enforcement, your application may be denied. Seek legal advice from a reputable, experienced immigration lawyer before leaving the U.S.

I have T Nonimmigrant Status. Can I leave the U.S. and come back?

YES BUT TRAVEL NOT ADVISED. If you travel outside the U.S. after your T approval but you do not have a valid T visa in your passport, you must (a) apply for a T visa at the U.S. consulate to allow you to come back to the U.S., and (b) return within 90 days or you will lose eligibility for adjustment of status. If you had accrued more than 180 days of unlawful presence before leaving, you will need to seek a waiver of the three-year or ten-year bar before you would be eligible to return. Also, if you return to your home country, it could cause you to lose your T status, since you claimed in your T application that you would suffer extreme hardship if returned to your home country. Seek legal advice from a reputable, experienced immigration lawyer before leaving the U.S.

I am applying for a T Nonimmigrant Status, and my application is pending. Can I leave the U.S. and come back?

GENERALLY NO. If you leave while your T visa is pending, you will lose your eligibility for the T visa. The only exceptions that would allow you to return to the U.S. are related to your trafficking victimization.

Can I travel to Puerto Rico, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands?

MAYBE. Even though Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands (“U.S. territories”) are part of the United States, non-citizen travelers from the mainland United States to these places can be put through the same review process by U.S. immigration officers as international travelers. (*See* INA § 212(d)(7) and 8 CFR § 235.5.) Customs and Border Protection (CBP) conducts “preinspection” at the airport in the U.S. territory, to decide if the traveller will be allowed to re-enter the mainland. This “preinspection” process is generally done in a very informal manner, without the help of a legal representative. This may involve CBP officers asking about immigration status, examining passports, or taking the traveler to a separate area for more detailed questioning. Even though noncitizens traveling from these U.S. territories to the U.S. mainland are exempt from the passport and visa requirements that international travelers face, they are subject to all the other grounds of inadmissibility. (*See* INA § 212(d)(7) and 22 § CFR 41.1(c)). Because of this, travel to any of these U.S. territories from the mainland can be risky for both undocumented individuals and individuals with lawful status who are deportable or inadmissible due to criminal convictions or other bars to re-entry. Seek legal advice from a reputable, experienced immigration lawyer before traveling from the mainland U.S. to any of these territories.