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FBAR Violation Puts Green Card Holder's At Risk

August 28th, 2011

Green Card holders face risk of non-renewal or revocation of their Green Card (permanent residence status) if they failed to file a Report of Foreign Bank Account (FBAR). This may come as headline news to some permanent residents and their advisors even though permanent residents are required to comply with income tax reporting as a condition of their immigration status. An FBAR is not an income tax form, it is a Bank Secrecy Act form and there is no direct mention on the USCIS/[IRS](#) link about FBAR filing obligations the failure to file an FBAR may be particularly troublesome to applicants under the EB-5 immigrant visa process. There is a section on Schedule B of Form 1040, that asks if the taxpayer has a foreign bank account, but there is no reference on the Form 1040 to the FBAR (Form TD 90-22.1) Under the EB-5 process an applicant is granted "conditional permanent residence" for a two year period. At the end of the two year period assuming that the conditions of the visa have been met the applicant can become a permanent resident. The conditions of the visa relate to minimum business investment and job creation. For EB-5 visa holders, the failure to file FBAR's could be asserted as a failure to comply with U.S. law and be a reason for denial of the application to remove the two year condition to become a permanent resident. Immigration and tax professionals advising EB-5 visa applicants as well as all other Green Card applicants need to advise their clients in writing of the obligation to file FBAR's and the potential consequences of not filing. In addition to the risks to immigration status there are civil and criminal penalties for failure to file an FBAR some of which are set forth below.

The penalty for failing to file the Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, commonly known as an "FBAR"). United States citizens, residents and certain other persons must annually report their direct or indirect financial interest in, or signature authority (or other authority that is comparable to signature authority) over, a financial account that is maintained with a financial institution located in a foreign country if, for any calendar year, the aggregate value of all foreign accounts exceeded \$10,000 at any time during the year. Generally, the civil penalty for willfully failing to file an FBAR can be as high as the greater of \$100,000 or 50 percent of the total balance of the

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foreign account per violation. See 31 U.S.C. § 5321(a)(5). Non-willful violations that the [IRS](#) determines were not due to reasonable cause are subject to a \$10,000 penalty per violation.

Possible criminal charges related to tax returns include tax evasion (26 U.S.C. § 7201), filing a false return (26 U.S.C. § 7206(1)) and failure to file an income tax return (26 U.S.C. § 7203). Willfully failing to file an FBAR and willfully filing a false FBAR are both violations that are subject to criminal penalties under 31 U.S.C. § 5322.

Taking all the consequences into consideration, all EB-5 applicants should have filed and continue to file FBAR's or they may lose their immigration status and face severe civil and/or criminal penalties.

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