

Commuting to the United States as a Permanent Resident: 'Alien Commuters' or 'Green Card Commuters'

Guidelines*

May 28, 2014

Generally, a foreign national who is a permanent resident of the United States must *reside permanently* in the United States or else risk losing permanent resident status. However, persons who have been granted U.S. permanent resident status can live in Canada or Mexico, even though they have no actual residence in the United States, without losing permanent resident status or a "green card"¹ if they commute regularly to employment in the United States. Such persons are considered to be "alien commuters" or "green card commuters."²

A. Qualifications for Alien Commuter Status

Alien commuter status stems from a U.S. administrative practice dating back to at least 1927, of admitting commuters as immigrants and permitting them border-crossing privileges as returning residents afterwards, despite the lack of a permanent residence in the United States. While there is no statute covering the category, there are regulations concerning the special condition, primarily at 8 CFR 211.5 and 8 CFR 316.5.

To become a commuter, the foreign national must have been granted permanent resident status in the United States, typically through an employment-based or a family-based sponsorship. Permanent resident status is defined as "the status of having been lawfully accorded the privilege of residing permanently in the United States as an *immigrant* in accordance with the immigration laws, such status not having changed."³ Alien commuters are considered to fall into the category of "special immigrants."⁴

* These materials are provided as general information. The contents do not constitute legal advice. Changes in U.S. law, policy, or procedure may render these materials inaccurate. Consult a qualified immigration attorney before seeking immigration benefits.

¹ "Green card" is the colloquial name of an Alien Registration Receipt Card (Form I-551) issued to U.S. permanent residents.

² Alien commuter status is also available to persons in special agricultural worker (SAW) category admitted for temporary residence. However, these Guidelines do not address the SAW category specifically. For excellent discussions of the history of the USCIS's "alien commuter" practice, see Article, *The Alien Commuter After Saxbe v. Bustos*, 8 U.C.D.L. Rev. 33 (1975); and Note, *Aliens in the Fields; The "Green-Card Commuter" Under the Immigration and Naturalization Laws*, 21 Stan.L.Rev. 1750 (1969).

³ 8 U.S.C. § 1101(a)(20) [emphasis added].

⁴ 8 U.S.C. § 1101(a)(27)(B).

1. Residing in Canada or Mexico

Alien commuter status is available to residents of “foreign contiguous territories” sharing a common boundary with the United States.⁵ Accordingly, it is limited to residents of Canada and Mexico.

The regulations provide that the person may “commence or continue to reside” in either of those countries. Accordingly, the person can be any of the following:

- A Canadian or Mexican citizen or national;
- A Canadian landed immigrant;
- A third country national who has lived in Canada or Mexico; or
- Anyone who will move to Canada or Mexico.

However, the person must commute from Canada or Mexico and not from a third country that is not contiguous to the United States.⁶

2. Working in the United States

To qualify as an alien commuter, the person must have “regular and stable” employment in the United States.⁷ Part time and intermittent work is acceptable if, on the whole, it is regular and stable.⁸ However, there is no bright-line rule about how much time the person must spend or plan to spend in the United States to qualify as an alien commuter.

Guidance from the State Department suggests that a person is either a “daily” commuter or a “seasonal commuter”: “Such alien may commute as a special immigrant, as defined in INA 101(a)(27)(A), to the alien's place of employment in the United States to engage in *daily or seasonal* work which, on the whole, is regular and stable.”⁹ U.S. Citizenship & Immigration Services (“USCIS”) guidance, on the other hand, is less restricted:

There are two types of commuters, those who *commute regularly*, normally entering at least twice weekly, and those who enter to perform seasonal work for extended periods, but whose annual stay in the United States is for less than six months.¹⁰

⁵ 8 CFR 245.21(a)(2).

⁶ Alvarez v. District Director of USCIS, 539 F.2d 1220, 1224 (9th Cir. 1976), cert. denied, 430 U.S. 918 (1977).

⁷ 8 CFR 211.5(a).

⁸ 9 FAM 42.22 N2.6; see also 8 CFR 211.5; Matter of Kane, Interim Decision No. 2371 (BIA 1975), discussing requirement for “continuous and substantial” employment ties for returning special immigrants.

⁹ 9 FAM 42.22 N2.6 [emphasis added].

¹⁰ USCIS Operations Instructions 211.3 [emphasis added]; see also Matter of Silva, Interim Decision No. 2457, (BIA 1975).

Presumably, a permanent resident who commutes to the United States less than twice weekly could still qualify as an alien commuter with evidence that he or she commuted “regularly” to engage in “regular and stable employment.”

Commuting is not limited by distance from the border, and there is no limitation of where the person must live within the contiguous territory or where he or she must work within the United States. Accordingly, it would appear that the person could commute by land, air, or sea to the place of employment anywhere in the United States.

Entries to the United States for purposes other than employment, however frequent the visits and for whatever duration, do not count for alien commuter status.¹¹ While occasional visits for nonbusiness purposes should be permitted, the person could lose permanent resident status if an immigration officer determined that he or she did not have regular and stable U.S. employment.

In addition, an alien commuter who has ceased working in the United States for more than six months, except for circumstances beyond the person’s control, might lose permanent resident status and have to give up his or her green card unless he or she moved to the United States. The alien commuter must provide proof of regular and stable U.S. employment every six months.¹²

B. Activities in the United States

The alien commuter enjoys the following privileges of permanent resident status:

- To remain in the United States indefinitely;
- To leave the United States and return after a “temporary” absence abroad;
- To have the right, but not the requirement to live in the United States; and
- To work in whatever occupation he or she chooses.¹³

There are some limitations on the status. The alien commuter may not petition for permanent resident status for family members. However, if family members accompany the person to the United States in permanent resident status and one or more of them converts to alien commuter status, the others’ permanent resident status is not affected.

One other limitation on the alien commuter is that the person does not accrue time toward becoming a naturalized citizen of the United States while an alien commuter.¹⁴

C. Obtaining an Alien Commuter “Green Card”

A person who seeks alien commuter status must first follow normal immigration procedure to be accorded status as an “immigrant” to the United States. He or she must apply for an immigrant

¹¹ USCIS Operations Instructions 211.3.

¹² USCIS Operations Instructions 211.4.

¹³ *Saxbe v. Bustos*, 419 U.S. 65 (1974); *Moorhead v. United States*, 774 F.2d 936 (9th Cir. 1985).

¹⁴ 8 CFR 211.5(c).

visa and a green card. The application can be processed either through the USCIS or by a U.S. Consulate or Embassy abroad. Initially, in either case the person's passport typically will be stamped to reflect normal immigrant status, that is, without reflecting alien commuter status, and the green card will be sent to the person later after it is processed.

When the person enters the United States for the first time as an immigrant, he or she informs the U.S. Customs and Border Protection (CBP) immigration officer at the border crossing or airport that he or she intends to live in Canada or Mexico and to maintain status as an alien commuter. The CBP will have the person complete a Form I-178 every six months and provide evidence of regular employment in the United States. The green card will be annotated to reflect alien commuter status.

A person already granted permanent resident status may apply for commuter status by filing a Form I-90 Application to Replace Permanent Resident Card, and indicating "I am a permanent resident who is taking up commuter status." The form may be filed online. The applicant will need to be present in the United States for a biometrics appointment to process fingerprints and photographs.

Once granted commuter status, the individual will receive a replacement green card with the code "C2" for commuter. Every six months, the commuter must appear at a port-of-entry to complete a form I-178 to CBP, and provide proof of both continuous employment in the United States, and residence in Canada or Mexico.

D. Switching to "Regular" Permanent Resident Status

An alien commuter who takes up residence in the United States is no longer regarded as a commuter. After deciding to reside in the United States, the person should file a new Form I-90 indicating, "I am a commuter who is taking up residence in the U.S."

E. Other Implications

Immigration officers may ask all permanent residents returning to the United States about the length and nature of the trip abroad and about the ties and purpose for returning to the United States. A person without sufficient ties to the United States can be deemed to have abandoned permanent resident status, and the immigration officer can confiscate the green card. If you have questions about maintaining permanent resident status, contact us or a qualified U.S. immigration attorney.

Adopting alien commuter status, or converting to full permanent resident status, also may have U.S.- or foreign-tax implications, including estate-planning implications. Persons considering such actions should consult a qualified international tax and/or estate planning attorney in our office or elsewhere about tax and other consequences.

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