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WHY IMMIGRANTS ARE OFTEN DENIED A GREEN CARD IN MEXICO

The Permanent Bar.

By Christopher Kerosky

There is a very severe penalty which applies to immigrants who enter the United States illegally more than once since 1997 known as "the Permanent Bar". Many people in the community and even some immigration advisors are not aware of this punitive law and, as a result, immigrants often leave the U.S. to process their status for a green card in Mexico when they are not eligible.

The results are tragic: instead of obtaining their permanent residence at the U.S. Consulate in Ciudad Juarez, the immigrant is informed that he or she is ineligible and must remain outside the U.S. for 10 years.

It is very important that anyone leaving the country to get their green card at the US Consulate in Mexico is aware of this law and ensures that they are not covered by it before leaving the United States.

Grounds for Inadmissibility to the U.S.

The U.S. Immigration and Nationality Act (I.N.A.) contains a number of grounds of "inadmissibility," including one called the "permanent bar." Broadly speaking, the grounds of inadmissibility are barriers to U.S. entry based on things like criminal and security violations, health troubles, likelihood of requiring need-based government assistance, and immigration violations. In literal terms, someone who is inadmissible to the U.S. will be denied any request for an immigrant visa (green card) or in many cases a temporary (nonimmigrant) visa.

The permanent bar comes from [Section 212\(a\)\(9\)\(C\)\(i\)](#) of the I.N.A., which makes inadmissible "Any alien who (I) has been unlawfully present in the United States for an

aggregate period of more than 1 year, or (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted.” This part of the law came from legislative changes made in 1996, called the Illegal Immigration Reform and Immigrant Responsibility Act or IIRIRA.

For example, let’s say someone crossed the U.S. border from Mexico illegally, stayed for a year, went home for a while, and then tried crossing the U.S. border a second time. That second attempt (whether it succeeded or not) makes the person inadmissible under this section. Leaving and coming back a few times so that no stay is longer than one year would not have helped, either. The word “aggregate” in the law means that it’s enough that the person’s stay added up to one year in total.

Similarly, someone who was removed from the U.S. and then tries to enter without going through the required admission procedures will be subject to the permanent bar.

What Is Unlawful Presence?

“Unlawful presence” refers to someone who either entered the U.S. illegally (such as by crossing the border secretly, or stowing away in a boat or car); or who came to the U.S. legally (on a visa or the Visa Waiver Program) and then failed to leave on time.

The only available exceptions at this time have to do with timing, given that this section of the law went into effect on April 1, 1997.

First, people who last reentered the U.S. before April 1, 1997 after a previous deportation are not subject to the permanent bar.

Second, people who accrued unlawful presence before April 1, 1997 need not count this time towards the aggregate one year needed to trigger the permanent bar.

What if I am covered by the Permanent Bar

Many grounds of inadmissibility can be waived, or automatically expire after a set period of time. But the permanent bar is harder – though not impossible – to overcome.

The statute says that someone subject to the permanent bar can request permission to enter the U.S. after waiting ten years first. The government interprets this to mean ten years outside the United States.

Obviously if someone is covered by the permanent bar, it is a bad idea to leave the country, even if you have been "approved" for a family petition and have an appointment at the Consulate to receive your green card. You will not get it.

It is a better idea to get legal advice on whether any other options exist or in the alternative, wait for the implementation of President Obama's Executive Order (DAPA) or immigration reform.