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Green Card After Seven Years

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Is it possible for an undocumented alien to get a green card if he has lived in the U.S. continuously for seven years?

The Immigration law does provide a way by which such an alien could get a green card. The process, known as suspension of deportation, unfortunately involves a lot of risks and if unsuccessful could result in deportation. When granted on the other hand, the alien gets a green card immediately. He also has the added advantage of applying for employment authorization while his case is pending.

Suspension of deportation is a recourse available only when there is already a deportation proceeding against an alien. This means that the INS has learned of a person's undocumented status and has formally given him notice to appear for a hearing on whether or not he should be deported. One who is already in the process of being deported might as well take advantage of the relief it offers as he has nothing to lose. He may yet gain a green card if he meets all the requirements. On the other hand, a person who is still undetected by the INS must exercise caution if he decides to use this remedy to legalize his status.

To take advantage of the relief granted under this law, an undetected undocumented alien would have to do what he fears most - make his presence known to the INS. Deportation proceedings would then take place. Before he gets to be deported though the alien asks the court to suspend deportation while he tries to prove that he is eligible for a green card. To do this he has to show that he meets all the requirements such as a continuous stay here in the U.S. for seven years. The law does not clearly say what a continuous stay means. "Brief, casual and innocent departures" are allowed. In one case a two hour trip outside the U.S. was not interruptive. On the other hand an extended absence of several months broke the requirement.

Crewmen and individuals subject to the foreign residence requirement are ineligible to apply.

Aside from the above requirement, the alien must also prove that he had been a person of good moral character during those seven years. Someone who has been imprisoned for more than 180 days for any violation will not be eligible. So is a person involved in polygamy, prostitution, illegal gambling, smuggling of aliens, and narcotic violations.

A third requirement which may be the most difficult to prove is extreme hardship. Financial concerns by themselves are not persuasive proof of this hardship. Instead the alien must be able to convince the judge that leaving this country would cause extraordinary suffering to him or to his spouse, parent or child who is a U.S. citizen or permanent resident. The judge, in making his decision, would weigh and balance all factors, negative and positive such as family ties and possible separation, age and health of applicant and relatives, community ties, condition in home country, financial concerns.

In the end, one can only hope for a judge who is compassionate and humane because getting a green card through this process depends largely on the judge's discretion.